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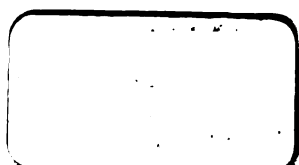
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AN ABRIDGEMENT
OF THE
ACTS OF THE PARLIAMENTS
OF SCOTLAND.

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AN ABRIDGEMENT
OF THE
ACTS OF THE PARLIAMENTS
OF SCOTLAND,

FROM THE REIGN OF JAMES THE FIRST IN 1424
TO THE UNION WITH ENGLAND IN 1707;

INCLUDING VERBATIM

ALL THE ACTS NOW IN FORCE AND USE:

WITH NOTES AND REFERENCES,
AND AN APPENDIX, CONTAINING A CHRONOLOGICAL TABLE
OF THE TITLES OF THE WHOLE ACTS AND STATUTES
PASSED BY THE SCOTTISH PARLIAMENTS.

BY

WILLIAM ALEXANDER,

WRITER TO HER MAJESTY'S SIGNET, FELLOW OF THE ROYAL SOCIETY OF EDINBURGH,
MEMBER OF THE SOCIETY OF ANTIQUARIES OF SCOTLAND, AUTHOR OF AN
ABRIDGEMENT OF THE ACTS OF SEDERUNT OF THE LORDS OF
COUNCIL AND SESSION, AND OF A DIGEST OF THE
BANKRUPT ACT FOR SCOTLAND.

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MDCCCXLI.



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EDINBURGH: PRINTED BY NEILL & CO. OLD FISHMARKET.

TO  
THE RIGHT HONOURABLE THE LORD PRESIDENT,  
THE RIGHT HONOURABLE THE LORD JUSTICE-CLERK,  
AND  
THE SENATORS OF THE COLLEGE OF JUSTICE;

MY LORDS.

When the LORD PRESIDENT communicated to me the approbation of your Lordships to my proceeding with a publication of an Abridgement of the Acts of SEDERUNT, containing only such of them as remained in force and use, his Lordship did me the honour to inform me that the Court recommended that I should extend my plan, by preparing and publishing a similar ABRIDGEMENT of the Acts of the PARLIAMENTS of SCOTLAND, and of the BRITISH STATUTES affecting Scotland since the Union.

I have, accordingly, now most respectfully to place before your Lordships an ABRIDGEMENT of the Scots Acts, containing verbatim the whole Statutes of the Parliaments of Scotland that appear to me to be at present in force and use, along with such notes and references as seem required.

I shall endeavour to follow out the remaining part of the suggestion of the Court as soon as possible ; and have the honour to be,

MY LORDS,

YOUR LORDSHIPS'

Most obedient humble Servant,

W. ALEXANDER.

19 WINDSOR STREET,  
14th October 1841.





## INTRODUCTION.

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### I. THE KINGS AND QUEENS OF SCOTLAND

THE authentic history of Scotland is generally held <sup>1057.</sup> to commence with the reign of MALCOLM III., surnamed CANMORE, in 1057.

MALCOLM married, about 1070, MARGARET, sister of EDGAR ÆTHELING, the last of the Anglo-Saxon princes, who was expelled from his kingdom by the Norman conquest of England.

The posterity of MALCOLM and MARGARET has continued to reign over Scotland ever since his death, except during usurpations of short endurance.

Much advantage was gained by the Scottish nation, from the taste for learning, the arts of refinement, and the spirit of devotion, that Queen MARGARET introduced and encouraged.<sup>1</sup>

MALCOLM CANMORE died in 1093, and, after a brief <sup>1097.</sup> usurpation, his son EDGAR began to reign in 1097.

<sup>1</sup> Fordun, iv. ch. 23, 24. HAILES's Annals of Scotland, vol. i. p. 36, &c.

- 1106-7. On the death of EDGAR in 1106-7, his brother ALEXANDER, also son of MALCOLM, began to reign.
1124. On the death of ALEXANDER I. in 1124, his brother DAVID, the youngest son of MALCOLM (who had passed his youth in England at the court of his sister MATILDA, Queen of HENRY I.), ascended the throne of Scotland.
1153. On the death of DAVID I. (whose virtues have been greatly extolled) in 1153, the crown of Scotland devolved on his grandson MALCOLM, son of HENRY, Prince of Scotland, who had predeceased his father DAVID.
1165. On the death of MALCOLM IV. in 1165, he was succeeded by his brother WILLIAM, surnamed THE LION, who died at Stirling 4th December 1214, in the 72d year of his age, and 49th of his reign.
1214. ALEXANDER II., a youth in his seventeenth year, succeeded his father WILLIAM THE LION, and reigned over Scotland 35 years, leaving the character of having been one of its wisest princes.
1249. ALEXANDER II. was succeeded, in 1249, by his only son ALEXANDER III., then a child in his 8th year, who was killed by a fall from his horse between Burntisland and Kinghorn, 16th March 1285-6, in the 45th year of his age, and 37th of his reign.
- 1285-6. MARGARET, called the MAIDEN OF NORWAY, the

daughter of MARGARET, Princess of Scotland, who was only daughter of ALEXANDER III., and who had married ERIC, King of Norway, succeeded her grandfather when an infant, and died at Orkney in 1290, in the 5th year of her reign.

Various competitors for the Crown of Scotland then appeared, all of whom withdrew or renounced their pretensions before the right of succession was determined by EDWARD King of England, who claimed to act as umpire, except JOHN BALLIOL Lord of Galloway, and ROBERT BRUCE Lord of Annandale. EDWARD declared in favour of BALLIOL, who was son of DERVORGUIL, who was the daughter of MARGARET, *eldest* daughter of DAVID Earl of Huntingdon, brother of WILLIAM King of Scots, in preference to BRUCE, who was the *son* of ISABELLA the *second* daughter of the Earl of Huntingdon.

JOHN BALLIOL began to reign in 1292, and re- 1292.  
signed the crown in 1296.

An interregnum followed, during which Sir WILLIAM WALLACE assumed the title of Governor of Scotland.

ROBERT BRUCE (grandson of the competitor with 1306.  
BALLIOL), who was born 11th July 1274, began to reign in 1306, and died in 1329, after securing the independence of Scotland by his successful struggles with England.

DAVID II. succeeded his father ROBERT BRUCE, and 1329.

died in 1370-1, in the 47th year of his age, and 42d of his reign.

1370-1. The succession to the throne then opened to ROBERT II., the High Steward of Scotland, who was the only child of the Lady MARJORY BRUCE, the eldest daughter of ROBERT I. and of WALTER, the High Steward of Scotland. ROBERT II. died in 1389, in the 74th year of his age, and 19th year of his reign.

1389. His eldest son JOHN Earl of Carrick was then crowned king, under the name of ROBERT III. He died on 4th April 1406, in the 16th year of his reign, immediately after hearing that the prince his son had, on his voyage from Scotland to France, during a time of truce with England, been captured by an armed vessel of that country, and detained as a prisoner by HENRY IV.

1406. Scotland thereupon fell under the regency of the Duke of ALBANY, brother of the late king; and on the death of the r<sup>è</sup>gent in 1419, his son Duke MURDOCH assumed the authority and name of Governor of the Kingdom.

1424. After much protracted negotiation for the release of the young King of Scots, JAMES I., from his captivity in England, the object was finally effected, and he and his Queen were crowned at Scoone on the 21st May 1424.

JAMES was in his 14th year when he was seized by the English. During the whole period of his unjust detention he was treated as a prince by the English mo-

narchs, and every opportunity afforded him of acquiring a knowledge of science and literature, of instructing himself in the art of war, and likewise of learning the most approved rules of government and for the administration of justice. His natural endowments, both of mind and person, enabled him to take extensive advantages of his opportunities of improvement at the English court, and his return to his country in the prime of life was a most desirable event for his subjects.

Before JAMES I. ascended the throne, the monarchs of Scotland had seldom been in use to convene the Parliament, or Great Council of the Nation, for legislative purposes, and the laws which they did pass, being written in Latin, were unintelligible to the great body of the people, and imperfectly understood by many of the Judges themselves. JAMES, on the contrary, held frequent Parliaments, and effected the greatest improvement in the law of Scotland, by introducing the custom of embodying and publishing the acts and proceedings of Parliament in the native language. JAMES I. may therefore justly be considered the father of the Statute Law of Scotland.

JAMES I. was murdered in the Dominican Convent near Perth, in the 44th year of his age, and the 13th of his reign.

JAMES II., an infant of seven years of age, succeeded his father JAMES I. to the throne of Scotland in 1437, and was killed by the bursting of a cannon at the siege of Roxburgh, in the 30th year of his age, in the year 1460. 1437.



1460. His son and successor JAMES III. was slain in the 35th year of his age, in the pursuit, after an unsuccessful battle with his rebellious subjects near Bannockburn, 1488. in the year 1488, and was succeeded by his son JAMES IV., then a youth of fifteen years of age, in arms against his father.

JAMES IV. was left dead upon the fatal field of Flodden, on 9th September 1513.

1513. JAMES V. was an infant of a year old at the death of his father, and died of a broken heart in the 33d year of his age, in the year 1542, a few days after his queen had been delivered of a daughter, the unfortunate 1542. MARY Queen of Scots.

1567. Queen MARY being deposed by her subjects, her infant son was crowned king, as JAMES VI., in the year 1567; and his mother, after remaining a prisoner in England for nineteen years, was executed by order of ELIZABETH on 8th February 1587.

JAMES VI., after succeeding to the crown of England as heir of Queen ELIZABETH, died in the year 1625, in the 59th year of his age, after having swayed the sceptre of England for twenty-two years, and that of Scotland from his cradle.

1625. His son CHARLES I. then succeeded to the crowns both of Scotland and England, and fell by the stroke of the executioner on the 30th January 1649.

The Protectorates of OLIVER and RICHARD CROMWELL followed. 1649.

CHARLES II., the eldest son of CHARLES I., was restored to the throne of his ancestors, and proclaimed king on the 29th May 1660. 1660.

CHARLES II. died in the year 1685, in the 55th year of his age, and the 25th of his reign, and his brother the Duke of YORK succeeded to the crown, by the title of JAMES II. of England and VII. of Scotland. 1685.

On the abdication of JAMES, a Convention of the Estates was held at Edinburgh, on 11th April 1689, which passed a vote that he had forfeited all title to the crown by maladministration and abuse of power. They therefore made a tender of the royal dignity to the Prince and Princess of ORANGE, the latter being the eldest daughter of King JAMES, and they immediately afterwards succeeded to the sovereignty both of Scotland and of England, under the title of WILLIAM and MARY. 1689.

MARY predeceased her husband in 1694, and, agreeably to the Act of Settlement, he continued to reign alone until his death, in the year 1701. 1694.

The Princess ANNE, second daughter of JAMES VII., then succeeded, and was Queen of Scotland, at the Union with England in 1707. 1701.  
1707.

## II. OF THE PARLIAMENT OF SCOTLAND.

The ancient muniments and records of the kingdom bear evidence that the Scottish kings had, from an early period, been in the custom of proceeding, in measures of State importance, with the advice and consent of an assembly composed of the principal ecclesiastics and nobility; but, supposing that the introduction of representatives of royal burghs into the national council was necessary to complete the constitution of a Parliament properly so called, none appears to have been convened sooner than the reign of BALLIOL in the year 1292. Such, at least, is the opinion of our excellent historian Mr PATRICK FRASER TYTLER, although some conceive they see clear proofs that the representatives of burghs took a share in the national deliberations at an earlier period, and others are disposed to think that burghs were not represented in Parliament till afterwards.<sup>2</sup>

The constituent members of the original Parliament of Scotland were, first, the Prelates and other dignified ecclesiastics; second, the Earls, Barons, and Freeholders of the king: third, the Representatives of Burghs.

The great Officers of State were likewise members of the Scottish Parliament *ex officio*.

The whole estates of Parliament sat in one house, and voted together as one deliberative body, consequently, the vote of every individual member was of equal weight

<sup>2</sup> See Tytler's History of Scotland, vol. ii. p. 272, Stuart's observations concerning the Public Law and Constitutional History of Scotland, pp. 121 and 328, and Wight's Inquiry into the rise and progress of Parliament, p. 44.

in estimating whether there was a majority of votes on one side or the other.<sup>3</sup> The Sovereign, his high Commissioner, or the Lord Chancellor, presided.

The deficiency of our records leave it a matter of uncertainty how many of the first and second of these classes or estates were bound to attend Parliament, and we have been left equally ignorant in what manner the burghs were represented for a considerable time after they formed the third estate. Proxies were conditionally allowed to attend for the nobility. The persons present in the different Scottish Parliaments, from the reign of JAMES III., will be found enumerated in Mr THOMSON'S folio edition of the Scots acts, and a list of those who attended and voted on 16th January 1707, when the union with England was agreed to by a majority of the members of the Scottish Parliament, will be found in the appendix to this publication.

The first great change made on the constitution of Parliament was in 1457, three years after the return of JAMES I. from captivity, when an act was passed<sup>4</sup> relieving the lesser barons and freeholders of the burden of attending in Parliament, on condition of their sending one or two wise men from each shire, according to its size, except the two shires of Clackmannan and Kinross, which, being very small, were only to send each of them one commissioner.

About the same period, the king appears to have commenced to exercise the power of creating lords of Par-

<sup>3</sup> See Sir George Mackenzie's Observations, p. 424.

<sup>4</sup> Act 1427, c. 2.

liament, who had a right to sit independently of any other title.<sup>5</sup>

There is some reason to believe that JAMES the First, who had received his education in England, proposed to put the Parliament of Scotland upon the same footing with that of England, so as that the commissioners of shires, and representatives of burghs, should assemble in a house separate from the prelates and nobility; but no such intention was ever carried into effect. Indeed, no part even of the statute 1427 seems to have been much regarded. The small barons neglected to send commissioners, and were, of course, still bound to give personal attendance in Parliament. Several acts were from time to time passed to enforce the presence of the small barons, but few of them went to Parliament except upon particular occasions, so that at last a doubt arose of their being entitled to a seat, and it was not till the year 1587, in the reign of JAMES VI., that their right of representation by commissioners was fully established. A statute was passed in that year,<sup>6</sup> which, proceeding on a recital of the statute of JAMES I., and of its propriety and expediency, renewed and confirmed that part of it which related to the choosing of commissioners of shires, and regulated the manner in which they were to be elected and summoned to Parliament.

The statute of 1427 allowed every freeholder to vote

<sup>5</sup> See Wight's Inquiry, p. 55; but Mr Wallace in his Thoughts on the origin of feudal tenures and descent of ancient peerages in Scotland, assigns the year 1587 as the time when the practice of creating lords of Parliament commenced.

<sup>6</sup> 1587. ch. 120.

in the election of commissioners; but by the act 1587 the right of voting was limited to "sick as hes fourtie shilling land in free tennendrie halden of the king, and hes their actuall dwelling and residence within the same schire;" and the commissioners were required to be wise men, being the "kingis freehaulders, residend indwellers within the schire, of gude rent, and weill esteemed."

Neither the acts of 1427 or 1587 prescribed the maximum number of commissioners that might be sent from counties, with the exception of Clackmannan and Kinross; but as the other proprietors of lands had to bear the expense of their commissioners, it is believed that none of the counties sent more than two commissioners.

The freeholders were appointed to meet yearly to elect commissioners, and to notify their names to the director of the chancery; and the commissioners so elected were summoned to the next ensuing Parliament.

The qualification of the electors and of the commissioners remained, as above stated, till 1661, when an act was passed,<sup>7</sup> declaring that all heritors, life-renters, and wad-setters, holding of the king, and whose yearly rent amounted to 12 chalders of victual, or L.1000 (Scots), all feu-duties being deducted, should be capable of electing, or being elected. About twenty years afterwards another act was passed,<sup>8</sup> dispensing with residence in the shire as a qualification, declaring that none should have a right to vote in the election of commissioners but such as stood publicly infeft in property or superiority, and were in possession of a forty-shilling land of old extent,

<sup>7</sup> 1661, ch. 253.

<sup>8</sup> 1681, ch. 87.



or in lands of L.400 (Scots) of valued rent, holding of the Crown or Prince. The privilege of voting was, by the same act, allowed to all proper wadsetters of lands, of the holding and extent or valuation above mentioned, to apparent heirs in possession by virtue of their predecessors' infeftments, to liferenters, and to husbands for the freeholds of their wives, or as having right to a liferent by the courtesy. Provision was made for having objections to votes disposed of by the Parliament or Convention of Estates if sitting, and if not, by the Court of Session ; and the law relating to the election of commissioners remained the same till the Union, with the exception of a regulation introduced by a statute of King WILLIAM,<sup>9</sup> declaring that no person during the currency of a protection against being arrested and imprisoned at the suit of creditors, should be capable to choose or to be chosen a member of Parliament.

In connection with the election of representatives of counties in the Scottish Parliament, it only remains to be stated, that, in 1690,<sup>10</sup> a statute was passed, ordering that to their former number of two representatives each, the shires of Edinburgh, Haddington, Berwick, Roxburgh, Lanark, Dumfries, Ayr, Perth, Aberdeen, Fife, and Forfar, should, in time to come, add two each ; and the shires of Kirkcudbright, Stirling, Argyle, and Renfrew, add one respectively ; thus making the total number of commissioners of shires ninety persons.

Previous to the year 1690, the number of commissioners for burghs who sat in Parliament varied considerably

<sup>9</sup> 1698, ch. 41.

<sup>10</sup> 1690, ch 14.

from time to time. Two commissioners frequently represented Edinburgh, Linlithgow, Stirling, Haddington, Perth, Glasgow, Aberdeen, and other principal burghs ; but in that year it was established by an order of the Convention of Royal Burghs, then sixty-six in number (the burgh of Campbelton not having then been erected), that no more than one commissioner should go to Parliament from any of the burghs except Edinburgh, which was to send two ; and this rule was observed from that time down to the Union.

The alterations that were made on that estate of Parliament, which was composed of the ecclesiastical order of persons, have now to be stated.

During the establishment of the Roman Catholic religion in Scotland, there appear to have been two archbishopricks, twelve bishopricks, twenty-seven abbacies, and thirteen priories, whose incumbents were entitled to a seat in Parliament.<sup>11</sup>

The Reformed religion, which was introduced into Scotland in the reign of Queen MARY, having still left the office of bishop in existence, persons called superintendants or bishops continued to sit in Parliament ; but an act of Parliament passed in 1587,<sup>12</sup> during the reign of JAMES VI., appropriating the most considerable part of the Church property to the Crown, rendered the prelates unable to bear the expense of attending the Great Council of the Nation.

The establishment of the Presbyterian form of Church government in 1592, increased the difficulties to the ec-

<sup>11</sup> Balfour, p. 34.

<sup>12</sup> 1587, ch. 8.

clesiastical estate being represented in Parliament, and various abortive attempts were made to secure seats for the pastors and ministers of the Kirk.

Soon after the accession of JAMES VI., however, to the Crown of England, he was able so far to gratify his predilection for Episcopacy, as to induce the Scottish Parliament to pass various acts<sup>13</sup> substantially restoring Episcopacy in Scotland, and consequently effecting the reintroduction of prelates into Parliament ; but his son and successor CHARLES I. was obliged, in the year 1640, to consent to several acts of Parliament entirely abolishing the Episcopal form of Church government, and excluding all archbishops, bishops, and other prelates from a seat in Parliament, which was then declared to consist of the nobility, barons, and burgesses.

Upon the restoration of CHARLES II., Episcopacy was re-established, and an act<sup>14</sup> of Parliament passed restoring the archbishops and bishops to their ancient place and privilege in Parliament.

When the government of JAMES VII. of Scotland and II. of England came to a termination, the national feeling in favour of the Presbyterian form of Church government became finally predominant. The declaration of the Estates of Scotland, containing the Claim of Rights, and the Offer of the Crown to WILLIAM and MARY (11th April 1689) bears—" That Prelacy and the superiority of any office in the Church above Presbyters, is, and hath been, a great and insupportable grievance and trouble to this nation, and contrary to the inclinations

<sup>13</sup> 1606, ch. 2 ; 1609, ch. 8 ; 1612, ch. 1 ; 1617, ch. 1 and 2.    <sup>14</sup> 1662, ch. 3.

of the generality of the people ever since the Reformation (they haveing reformed from Popery by Presbyters), and therefor ought to be abolished.”

The legislative enactment made to that effect by the act 1689, ch. 4, was immediately followed by another,<sup>15</sup> confirming the Presbyterian form of Church government by Kirk-Sessions, Presbyteries, Provincial Synods, and General Assemblies, and repealing all former statutes that were prejudicial to, or inconsistent with, that plan ; and thenceforward to the Union with England, the three Estates of the Parliament of Scotland were composed of the temporal peers, with the officers of State, the barons or commissioners from shires, and representatives of burghs.

#### LORDS OF THE ARTICLES.

A striking peculiarity connected with the ancient Parliament of Scotland, was the existence of the committee of its members, termed *The Lords of the Articles*. Our historians differ very widely in their representations both of the mode of election of this committee, and its effect upon the freedom of Parliament. Dr ROBERTSON speaks of it in these terms :—“ As far back as our records enable us to trace the constitution of our Parliaments, we find a committee distinguished by the name of Lords of Articles. It was their business to prepare and to digest all matters which were to be laid before Parliament. There was rarely any business introduced into Parliament but what had passed through the channel of this

<sup>15</sup> 1690, ch. 7.

committee ; every motion for a new law was first made there and approved of or rejected by the members of it. What they approved was formed into a bill and presented to Parliament ; and it seems probable, that what they rejected could not be introduced into the House. This committee owed the extraordinary powers vested in it to the military genius of the ancient nobles ; too impatient to submit to the drudgery of civil business ; too impetuous to observe the forms, or to enter into the details, necessary in conducting it, they were glad to lay that burden upon a small number, while they themselves had no other labour than simply to give or to refuse their assent to the bills which were presented to them. The Lords of Articles, then, not only directed all the proceedings of Parliament, but possessed a negative before debate. That committee was chosen and constituted in such a manner as to put this valuable privilege entirely in the king's hands. It is extremely probable that our kings once had the sole right of nominating the Lords of Articles. They came afterwards to be elected by the Parliament, and consisted of an equal number out of each estate, and most commonly of eight temporal and eight spiritual Lords, of eight representatives of boroughs, and of the eight great officers of the Crown."<sup>16</sup>

On the other hand, Dr GILBERT STUART remarks, " The nomination of this committee appears from the acts of JAMES I. The preface to his laws is in these words :—' *Acta Parliamenta JACOBI primi regis Scotorum, tenti apud Perth xxvi. die menses Maii, Anno Do-*

<sup>16</sup> Hist. of Scotland, b. i.

mini millesimo quadringentesimo vigesimo quarto, et regni sui xix. convocatis *tribus* regni *statibus*, ibidem congregatis *electæ* fuerunt *certæ personæ* ad *articulos* datas per dominum regem determinandos, data cæteris licentia recedendi.’”

“ Instead, then, of having been elected by the king, or by his dependants, the Lords of the Articles were chosen in Parliament. They were a committee of the Three Estates, not the creatures of the prerogative; and they received articles from the king, which they were to examine and to prepare for the Parliament.

“ The testimony of this preamble is confirmed by a statute of JAMES III., in which power is entrusted ‘be the hail three Estates to certane personis underwritten, to commoun and conclude upone the matters effter followand;’ for the council of the Articles are thus described as a committee of Parliament.”

“ From the constitution of the Council of Articles, as illustrated by the acts of JAMES I. and JAMES III., it is yet obvious, that it was merely their intention to prepare business for Parliament. The subjects into which they were to inquire were submitted to them, and the result of their deliberations was reported in full Parliament, and examined and voted there. But other testimonies, to evince these particulars, are to be produced.”

“ In the acts of Parliament of the reign of JAMES IV., there are these passages :”—

“ As tuiching the renewing and confirmatioun to be maid of the consideratioun and allyance of France, and in likewyse of Denmark and Hispanzie, it is thocht ex-

pedient be the Lords of the Articles, that they desyre to purches and obtain sic friendschippis, liberteis, and fredomes, for the gude public of this realme and proffeit of the cours of merchandice, and sic things as sall be sene profitabill be the Lords of the Kings secreit counsall. *That thairfoir the Body of the Parliament hes committed Power to the Chancellar and secret counsall, to mak the instructiouns and avise sic desyris, as they sall think expedient for the gude of the King, his realme, and liegis, quhilkis sall be done to the King, and in the name of the hail body of his Parliament."*

" These proofs explain fully the use of the Lords of the Articles in our constitution. They were not instruments of tyranny, but a council for facilitating affairs. Articles were submitted to their scrutiny; and they judged not finally, but proposed their overtures to Parliament. The Parliament was to approve these, or to reject them; and the object of the Lords of the Articles, while they deliberated together, was the emolument of the kingdom, and not the power of the prince."

" In the institution, and in the election of the Lords of the Articles, there appear the marks of legality, and candour, and justice. No arts which had been used to overawe or direct them in ancient times have been traced or discovered. And, indeed, to gain or to corrupt this council, while it was difficult in itself, was to acquire nothing. For, its overtures being debatable in Parliament, the deliberations and authority of the three estates were to overturn all improprieties in their behaviour and conduct."

“ It was not till a late period in our history, that any attempts were even made to counteract their virtue and integrity. These might first be thought of in MARY’S reign ; but, I conceive, they were chiefly fostered by a weak or an artful statute of JAMES VI. If we believe this statute itself, it was intended to prevent in Parliament the spirit of frivolous disputation. It may, notwithstanding, have covered a more dangerous purpose. With whatever design, however, it might be framed, this is certain, that it contributed to suggest that negative before debate, of which the monarchical writers are so full, and which was to distinguish the dominations of CHARLES I. and CHARLES II. High notions of prerogative had indeed been founded in the reign of JAMES VI., but they received a memorable correction ; and the power and freedom of Parliaments were proclaimed in language the most respectful and decisive.”

“ Thus the corruption of the Lords of the Articles was late in making its appearance, and it did not continue long. It was to characterize those reigns which immediately preceded the extinction of this council. And, what confirms all I have said, when the Convention of Estates at the Revolution was to complain of the Lords of the Articles as a grievance, it was indirectly to acknowledge the propriety of the council itself, and to urge only the invasion which had been made upon the freedom of its election.”<sup>17</sup>

What appears requisite to be here mentioned in regard

<sup>17</sup> STUART’S Observations concerning the Public Law and Constitutions of Scotland, p. 348, *et seq.*



to the Lords of the Articles, cannot probably be better or more authoritatively stated than in the words of ERSKINE—"A Committee, called *the Committee of Articles*, was elected in the beginning of every Parliament, and consisted of a certain number of the Three Estates. Its constitution appears to be at least as old as the oldest of our proper statutes, *Black Acts*, fol. 1. This Committee was at first chosen by the Three Estates, *Ibid.* fol. 50. Their business was to receive all proposals relative to parliamentary matters, and transmit them to Parliament; and frequent references are made in our more ancient statutes to the special articles laid before that Committee, 1503, ch. 64; 1540, ch. 82, 119, 120, &c. Immediately after the election of this Committee, the Parliament was adjourned, *debatur cæteris licentia recedendi*, as it is expressed in *Black Acts*, fol. 1; and, in the mean time, this Committee prepared overtures, which were afterwards voted in full Parliament, generally on the last day of their sitting. Under colour of preventing frivolous debates, it was enacted by 1594, ch. 218, that no matter should be brought before the Parliament which was not first laid before this Committee, and presented by the Clerk-Register in their name to the Three Estates. The manner in which they were chosen about a century ago is particularly set forth, 1663, ch. 1. It having been, after the Revolution, accounted inconsistent with freedom of Parliament, that nothing could be there proposed but what had been previously concerted by an inconsiderable number of its members, that Com-

mittee was declared a grievance by *Conv. Est.* 1689, ch. 18, and actually suppressed by 1690, ch. 3.”<sup>18</sup>

#### FREQUENCY AND DURATION OF PARLIAMENTS.

As will be seen from the Chronological Table of Acts printed in the Appendix, frequent Parliaments were called by the first six JAMESSES, and by MARY, but their sittings were generally of very short duration, and the next meeting of the Three Estates was a new Parliament, which might consist of many new members from changes in the persons elected commissioners of shires and of burghs. CHARLES I. began the practice of continuing or adjourning the Parliament so as to keep the same one in existence for several years. The first Parliament of CHARLES I. was held at Edinburgh, 15th September 1628, and was continued to 15th April 1629; and successive continuations were made to 5th September 1629, 1st June and 3d August 1630, 1st April and 4th August 1631, 13th April 1632, and 18th June 1633. Again, the Parliament which met on 15th May 1639 was, after various proceedings therein, prorogated on 14th November that year, by the King's High Commissioner, to the 2d of June next to come, and a declaration and remonstrance by the Estates of Parliament was entered against the prorogation.

The great Rebellion and the Protectorate followed.

CHARLES II. adopted the practice of his father in exercising what was supposed to be the royal prerogative,

<sup>18</sup> *ERSKINE*, Book i. tit. iii. § 5.

of adjourning and continuing the same Parliament at pleasure. The first session of his first Parliament was terminated (9th September 1662) with the following act of adjournment:—"The Kings Maiestie declares this Parliament current, and adjourns the same to the twelfth day of March next to come; ordaining all Members of Parliament, Noble-men, Commissioners of Shires and Burghs, and all others having interest, to attend that day; and that there be no elections in Shires or Burghs except upon the death of any of the present Commissioners,"

The first Parliament of King CHARLES II. consisted of three sessions held by adjournment. The same power of prorogation was exercised by him in his second Parliament. It is still more remarkable that the Parliament held after the Revolution of 1688, under the authority of WILLIAM and MARY, consisted of no less than nine sessions, having been continued by adjournments from time to time, not only during the life of MARY, but even during the whole period of WILLIAM's own reign after her death, and a part of the reign of his successor, Queen ANNE. It thus became part of the settled public law of Scotland, previous to the Union, that there was no limited period beyond which the same Parliament might not subsist; and Mr WIGHT observes, "This was, however, a defect in the constitution, as it enabled the Crown to maintain, as long as it pleased, the authority of a Parliament favourable to its views, and to prevent the nation from putting a stop to an unconstitutional extension of the royal prerogative, by electing represen-

tatives more attentive to the true interests and the liberty of the people.”

#### CONVENTION OF ESTATES.

It only remains to be stated, under this sketch of the constitution of the Parliament of Scotland, that, besides regular Parliaments, the Kings of Scotland were wont, upon particular emergencies which required immediate deliberation and execution, such as a sudden invasion, or the necessity of raising a sum of money to answer a sudden exigency, to call what were termed *Conventions of the Estates*. On such occasions there was no necessity for any formal citation of all those who had a right to sit in Parliament. The king called any number that could be speedily brought together, and their powers were limited to that particular business for which they were called.<sup>19</sup>

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#### III. ACTS AND STATUTES OF THE KINGS AND PARLIAMENTS OF SCOTLAND.

It has already been mentioned, that, previous to the return of JAMES I., in 1424, any laws that were passed were promulgated in Latin. Sir JOHN SKENE attributes the commencement and continuance of this custom to a device of the clergy, who, being almost the only persons versant in the Latin language, thereby acquired for

<sup>19</sup> WIGHT, b. i. ch. ii. p. 100.

their order “ the conception and interpretation of the lawes, in sic sort, that they onely might *figere, refigere, vertere, perfringere leges, iis abuti ad suum quæstum et ambitionem.*”

Although the statutes passed in the reign of JAMES I. and his successors were written in the language of the country, there does not appear to have been any authoritative translation made of the previous, or Auld Laws (as they were termed), till Sir JOHN SKENE, the Clerk-Register in the reign of JAMES VI., completed that task, which was imposed upon him by his sovereign.

Sir JOHN SKENE’s publication contains an English translation or transcript of the following Auld Lawes and Constitutions of Scotland.

1st, “ The *Laws of King Malcolme Mackenneth* second of that name quha was son to *Kenneth the Third* and began to reigne in the zeare of the creation of the world 4974. of Christ 1004.”

2d, The Treatise called *Regiam Majestatem*, attributed to King DAVID I., and so intituled from the words with which it commences.

3d, A treatise intituled “ *Quoniam Attachiamenta* or the *Baron Lawes*,” also ascribed to King DAVID I.

4th, Another treatise intituled “ *The Forme and Manner of the Baron Court*,” said by Sir JOHN SKENE to be “ writtin in English Language, be some learned lawer, not lang time bygane.”

5th, “ The *Laws and Constitutions of Burghs* made be King DAVID the First, at the New Castell, vpon the Water of Tyne.”

6th, "The *Court of the Foure Burrowes* Edinburgh, Stirling, Berwick and Roxburgh."

7th, "The Statutes of the Gild (Societie of Merchands) made and constitute be ROBERT DURHAME Mair of Berwick vpon Twede, and SIMON MARTELL, and other gude men, vpon the Daies of Wednesday before the Feast of S. Mark the Evangelist; and vpon the Morne after S. Cuthberts Day, in S. Nicolas Kirk, the Zear of God 1283. And vpon Setterday next after the Feast of the Halie Trinitie; and upon Thursday next after the Feast of S. Andrew the Apostle; and vpon Thursday before the Feast of Whitsonday, the Zeare of Christ 1284. in the Kirk of the Black-friers. To the end that many bodies conveined in ane place, may have amongst them ane union, ane will, and ane firme and sincere love, ilk ane till other."

8th, "The *Chalmerlane Air*."

9th, "Ane *Schort Forme* of the *Justitiars Air*."

10th, "The Statutes of King WILLIAM."

11th, "The Forest Lawes," ascribed to King WILLIAM.

12th, "The Statutes of King ALEXANDER the Secund."

13th, "The First Statutes of King ROBERT the First."

14th, "The Secund Statutes of King ROBERT the First."

15th, "The Assises or Statutes of King DAVID the Secund of that name."

16th, "The Statutes of King ROBERT the Secund."

17th, “ The Statutes of King ROBERT the Third.”

The authenticity of these Laws and Treatises, particularly of the *Leges Malcolmi*, *Regiam Majestatem*, and *Quoniam Attachiamenta*, has been challenged by several of our Lawyers and Historians, especially by Sir DAVID DALRYMPLE of Hailes, and their authority contended for by Sir JOHN SKENE and others.<sup>20</sup>

Mr ERSKINE, in discussing what authority the Books of the Majesty, and the other tracts in SKENE’s collection had or ought to have in the Courts of Scotland, makes the following observations:—“ The *Regiam Majestatem* is said, by its preface, to have been written at the command of King DAVID, and with the consent of the people and clergy; and though no confirmation by the legislature now appears, our later statutes have expressly acknowledged it for the ancient law of Scotland; *supra*, § 32. The authenticity of the *Borough-laws* and of the *Assisa Regis Davidis*, which are universally agreed to have been enacted by the same DAVID, and of the statutes of WILLIAM, ALEXANDER II., DAVID III., and the three ROBERTS, hath never been called in question, so that these must have had, when they were first enacted, the authority of law. The remaining tracts in that collection were either written by private hands, as *Quoniam Attachiamenta*, *Iter camerarii*, &c., or by ma-

<sup>20</sup> See Lord HAILES’s Examination of some of the Arguments for the high antiquity of *Regiam Majestatem*, and an Inquiry into the Authenticity of *Leges Malcolmi* (Edin. 1769). Sir JOHN SKENE’s Epistle to the Reader, prefixed to his Translation; ERSK. b. i. tit. i. § 32, *et seq.*; STAIR, b. i. tit. i. § 16, and b. iii. tit. iv. § 27; CRAIG, l. i. dieg. 8, § 11; and Mr THOMSON’s Reports on the Records, &c.

gistrates of boroughs, as *Statuta Gildæ* ; and therefore have had at no time any proper authority. But the whole of SKENE'S collection, even that part of it which was originally authoritative, gradually lost its force, because, not having been preserved from interpolation by any public record, the copies, in passing through different hands, had been in many places corrupted. The legislature, with a view to give authenticity to such of those remains as should be found to deserve it, directed three several committees to be appointed for revising and correcting them, who were to make their report to Parliament, 1425, ch. 54 ; 1487, ch. 115 ; 1633, ch. 20. But as no such revision or report appears to have been made by any of the three, and far less any ratification by Parliament, it may be concluded that none of these remains ought to be received as of proper authority in the Courts of Scotland. Nevertheless they may be produced, not only for illustrating, but even in proof of our ancient customs. They are also of excellent use towards understanding the history and gradual progress of our law ; and consequently may furnish a lawyer with proper arguments where statute law is silent, and the more modern practice doubtful.”<sup>21</sup>

The statute law of Scotland, in its proper and strict sense, therefore, commenced upon the return of JAMES I. from England in 1424, and now consists of the Acts of Parliament (so far as not repealed or altered) passed during his reign and those of his successors till the Union in 1707, and of such of the British Statutes as are applicable to Scotland.<sup>22</sup>

<sup>21</sup> ERSK. b. i. t. i. § 36.



The reigns of the first five JAMESES and of MARY were distinguished by many statutes of great importance and advantage at the times they were passed, and by several that continue in operation, and are of the greatest utility at the present period. Of those so remaining in force, the following are especially deserving of notice, viz. The act 1449, ch. 6, intituled “The byer of Landes suld keepe the Tackes set before the bying;”—The act 1469, ch. 4, intituled “Of obligations to be followed within fourtie zeir, or else prescrive;”—The act 1469, ch. 12, intituled “That the puir Tennentes sall pay na farther than their terms maill for their Lordis debt, be the brieve of distresse;”—The act 1474, ch. 6, intituled “Of ane Tutor and his age;”—The act 1475, ch. 8, intituled “Anent the brieve of Idiotrie and furiositie;”—The act 1487, ch. 17, establishing the Convention of Royal Burghs;—The act 1503, ch. 37, introducing the power of subfeuuing lands;—The act 1532, ch. 2, instituting the present Court of Session;—The act 1540, ch. 40, intituled “The nearest of the kin, to have the gudes of minors, that dies intestat, without prejudice of the Quote;”—The act 1555, ch. 8, “Anent the ordour for giving of Curatoures to Minors;”—And the act 1555, ch. 18, providing for the examination and admission of Notaries by the Lords of Session.

Much of the time and attention of the Scottish Parliament during the reign of JAMES VI. was occupied by

<sup>22</sup> The statute law of England commences with the reign of RICHARD I. in 1189, the previous acts of Parliament not being pleadable as such. See FLINTOFF's *Rise and Progress of the Laws of England and Wales*, 1840.

the legislation necessary upon the substitution of the Reformed Religion for Popery, and the changes in the national religion between Presbyterianism and Episcopacy.

Of the statutes disconnected with ecclesiastical affairs and passed during the reign of James VI., and still forming part of our Statute Law, the following are highly important :—The act 1573, ch. 1, introducing the right of divorce on the ground of four years' wilful desertion;—The act 1579, ch. 12, " For punishment of strang and idle Beggars, and reliefe of the pure and impotent," which is the foundation of the Scottish system of poor laws;—The act 1579, ch. 13, which contains the original constitution of a Register of Hornings;—The acts 1579, chaps. 19, 20, and 21, establishing a triennial prescription in certain cases;—The act 1581, ch. 24, which established a Register of Inhibitions and Interdictions;—The act 1594, ch. 24, by which the doctrine of the long positive prescription originated;—The act 1608-9, ch. 14, which originated the office and jurisdiction of Justices of the Peace in Scotland;—The act 1617, ch. 12, " Anent prescription of Heritable Rights;"—The act 1617, ch. 16, " Anent the registration of Reversions, Seasings, and other writs;"—And the act 1621, ch. 18, which continues one of the principal statutes against alienations by debtors to the prejudice of their creditors.

The system of teinds or tithes in Scotland was remodelled and regulated by CHARLES I. and his Parliament, with the most beneficial results to the agriculture of the country.

Various excellent laws were made during the Usurpation; but, having been rescinded and declared null on the restoration of CHARLES II., they cannot be considered as forming any part of our Statute Law.

The statutes passed during the reign of CHARLES II. were both numerous and important. Besides many relating to teinds and ecclesiastical affairs, the following relating to other matters require attention, viz. The act 1661, ch. 88, intituled "Act concerning Appearend Heirs, their payment of their Predecessors, and their own debts;"—The act 1661, ch. 338, being a commission and instructions to the Justices of Peace and Constables;—The act 1661, ch. 344, intituled "Act for ordering the payment of Debts betwixt Creditor and Debitor;"—The act 1669, ch. 14, establishing various periods of prescription in certain cases;—The act 1672, ch. 2, intituled "Act concerning Pupils and Minors, and their Tutors and Curators;"—The act 1672, ch. 40, intituled "Act concerning the regulation of the Judicatories," which, *inter alia*, remodelled the Court of Justiciary after a new form, which subsists till this day;—The act 1672, ch. 45, intituled "Act concerning Adjudications;"—The act 1681, ch. 5, which continues the leading statute respecting the execution and the authentication of deeds;—The act 1681, ch. 13, intituled "Act concerning the Registration of Seisings, and Reversions of Tenements within Burgh;"—The act 1681, ch. 82, which greatly enlarged the powers and privileges of the Court of Admiralty;—And the act 1681, ch. 86, authorizing summary execution on protests of foreign bills of exchange.

The legislation of the reign of JAMES VII. is remarkable from the passing of the act 1685, ch. 26, which was the foundation of the power to entail lands in Scotland.

The final establishment of the Presbyterian form of church government that was effected on the accession of WILLIAM and MARY to the crown called forth many parliamentary enactments relating to the national religion, and among others the interposition of the authority of Parliament to the Confession of Faith; and the Statute Book of Scotland received many additions and improvements during their reigns. The following may specially be referred to, viz. The act 1693, ch. 22, intituled "Act concerning the preference of Real Rights;"—The act 1693, ch. 23, intituled "Act concerning the Register of Sasines, Reversions," &c.;—The act 1695, ch. 7, establishing the septennial prescription of cautionary obligations;—The act 1695, ch. 39, intituled "Act for obviating the frauds of Appeairand Heirs;"—The act 1695, ch. 72, intituled "Act anent Executry and Moveables;"—The act 1696, ch. 4, intituled "Act for regulating Deeds done on deathbed;"—The act 1696, ch. 5, intituled "Act for declaring Nottour Bankrupt;"—The act 1696, ch. 8, intituled "Act anent the nomination of Tutors and Curators;"—The act 1696, ch. 9, intituled "Act of Prescription anent Tutors and Curators accompts;"—The act 1696, ch. 26, intituled "Act for the settling of Schools;"—The act 1696, ch. 32, intituled "Act anent the aliment of poor Prisoners;"—The act 1696, ch. 38, authorizing summary execution on protests of inland bills;—And the act 1701, ch. 6, intituled

“ Act for preventing wrongous Imprisonments and against undue delays in Tryals,” justly considered as the *Habeas Corpus* Act of Scotland.

The Parliament of Scotland during the reign of Queen ANNE, was almost wholly occupied in discussing the terms of the Treaty of Union with England, and the consequent arrangements.

The Statute Book of Scotland will likewise be found to contain many salutary provisions for the prevention and punishment of offences and crimes, and for securing the morality of the country.

The prosperity of Scotland is in no small degree to be attributed to the excellence and comprehensiveness of her Statute Law, which achieved the following objects of paramount importance.

1st, Great security and speedy redress against all offences against the persons of the lieges.

2d, Ample protection against invasion of their rights of property, heritable and moveable.

3d, The institution of Supreme Civil and Criminal Courts, with relative subordinate local Courts in the different shires or most convenient districts of the country.

4th, Provision against imprisonment under a criminal accusation beyond a short definite period.

5th, Trial by jury in all criminal cases of importance, and in many questions of a civil nature.

6th, Aliment to prisoners for civil debts, and their liberation under the process of *Cessio Bonorum*, upon

their making a fair surrender of their property for behoof of their creditors.

*7th*, Admirable prohibitions against alienations by debtors, to the prejudice of just and lawful creditors.

*8th*, Great facility in apprehending the persons of acknowledged debtors, and for attaching their property, heritable and moveable.

*9th*, Anxious provisions against profaneness and immorality, and for the due observance of the Sabbath-day.

*10th*, Privileges to royal burghs, for the encouragement of trade and manufactures.

*11th*, Provisions to secure the proper distribution of the moveable estate of deceased persons among their nearest of kin or creditors.

*12th*, Regulations for the appointment of tutors and curators to minors and others incapable of acting for themselves, and to secure a proper accounting on the part of the guardians.

*13th*, The protection of the salmon and other fishings of the country, and likewise of the game.

*14th*, The construction of highways and bridges, and establishment of ferries throughout the country.

*15th*, The encouragement of planting and enclosing, the division of commonties, and improvements in agriculture.

*16th*, Security to tenants in their possessions, and the non-liability of their goods for the debts of their landlords.

*17th*, The establishment of various periods of prescription, well adapted to ensure stability and certainty in regard to personal and heritable rights.

18th, A complete system of records of deeds, diligence, and especially of titles to heritable property, and exhibiting the encumbrances thereon.

19th, Regulations for the proper execution and authentication of deeds of importance.

20th, The moderate maintenance of the poor, and the suppression of idle beggars.

21st, The establishment of a National Church, composed of a resident Clergy, provided with suitable manses and glebes, and endowed with moderate stipends provided out of the teinds of lands, in such a way as to avoid most of the evils of the tithe-system in England.

22d, The means of education from Parochial Schools.

Many other subjects of the legislation of the Scottish Parliaments might be enumerated ; and it may be safely stated in general, that the wisdom displayed in the Statute-book of Scotland will enable it to bear a favourable comparison with the written code of any other European nation of the period.

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#### IV. EDITIONS OF THE SCOTS ACTS, AND PLAN AND OBJECT OF THE PRESENT ABRIDGEMENT.

The principal editions of the Acts of the Parliaments of Scotland heretofore published are the following :—

1st, The Public Acts of the first five JAMESSES, and of part of those of Queen MARY, which were published by her command in 1566 ; and being printed in the black

or Saxon character, that impression got the name of the *Black Acts*.<sup>23</sup>

*2d*, The Public Acts of the first five JAMESSES, of Queen MARY, and part of those of JAMES VI., published in 1597, by Sir JOHN SKENE, the Clerk-Register to that Prince.

*3d*, The Public Acts of the first five JAMESSES, QUEEN MARY, JAMES VI., CHARLES I., and part of those of CHARLES II., published in 1681, by Sir THOMAS MURRAY of GLENDOCK, Clerk to his Majesty's Council, Register, and Rolls, by his special warrant.

*4th*, Another edition of GLENDOCK's collection, published in 1682 and 1683, in two small volumes, to which a third was added by the King's printers after the Union, containing the public acts between 1681 and 1707.

*5th, and lastly*, The whole Public and Private Acts and Statutes of the Parliament of Scotland, from the reign of JAMES I. in 1424, till the Union in 1707, published during the present century in ten large folio volumes, under the superintendence of THOMAS THOMSON, Esq. Deputy Clerk-Register, by command of His Majesty King GEORGE III., in pursuance of an address of the House of Commons of Great Britain.<sup>24</sup>

<sup>23</sup> Printing was introduced into Scotland under the auspices of JAMES IV., and it appears from a grant under the Privy-Seal, September 15. 1507, that one of the first purposes to which he directed the act to be applied was, "the imprinting within the realm of the bookis, laws, acts of Parliament," &c.; but there is no trace left of the work ever having been completed. See Introduction to the Knightly Tale of Gologrus and Gawane, reprinted Edinburgh 1827, 4to.

<sup>24</sup> The first volume of Mr Thomson's work, in which it is intended to include *Regiam Majestatem*, and other treatises and statutes prior in date to 1424, has not yet been published.



Various partial publications of the Scots Acts were made from time to time, which, so far as now useful to be known, will be found noticed in the comparative table annexed, shewing how the acts are numbered in the different editions.

The value and importance of these publications, particularly of the splendid work of Mr THOMSON, must be fully acknowledged; but the plan on which they are edited creates much difficulty in consulting or referring to them in the ordinary course of business, because, 1<sup>st</sup>, The successive editors published the whole Public Statutes known to them to have been at any time passed by the Legislature, including many of a temporary nature, or afterwards expressly repealed. 2<sup>d</sup>, No annotations were given to shew what acts published had been repealed or altered, either by subsequent Scots Acts, or by British Statutes; and 3<sup>d</sup>, No index *materiarum* was supplied in Mr THOMSON's edition, or in any other of a later date than that of 1681.

The plan of the present publication, on the other hand, is, 1<sup>st</sup>, To lay before the reader such public acts only as are or may be considered in force. 2<sup>d</sup>, To supply such notes and references as will point out when any one act is affected by, or connected with, other acts, and the legal authorities where the subject of many of the acts will be found noticed; and, 3<sup>d</sup>, To give a complete index of the points and subjects contained in these acts and notes.

It has also been thought advisable to append to the work the Chronological Table contained in Mr THOM-

SON'S edition, exhibiting the titles of the whole acts and statutes, public and private, passed by the Parliaments of Scotland, without excluding any on account of their being repealed or temporary ; thus furnishing the reader with the means of knowing in regard to what matters, places, and persons, Acts of the Parliament of Scotland were, from time to time, passed.

As may readily be supposed, the Editor met with many acts respecting which it was difficult to decide whether they were in force or in desuetude, and also several acts which, although not perhaps strictly in force, were still material, as illustrating the progress and history of the law. Both these descriptions of statutes have, for the sake of greater security and utility, been inserted in the present abridgement, generally without any annotation, and with a due regard to exclude superfluous matter.

The great aim, however, of the Editor has been to put the legal profession and the public in possession of a work, in a convenient form, containing the whole acts passed by the Parliaments of Scotland which remain in force and use, in whole or in part, at the present period ; and, from the time and attention bestowed on the subject, and from the various checks that have been adopted to guard against inaccuracy, considerable confidence is entertained that his object may have been accomplished.

W. ALEXANDER.

19 WINDSOR STREET,  
14th October 1841.

NOTE.—In consequence of the abbreviations used in Mr THOMSON'S edition of the Scots Acts, that of GLENDOK has been adopted down to 1681, correcting in the text, or pointing out in the annotations, any material errors or discrepancies. After that date Mr THOMSON'S edition has been alone followed.

The dates of holding the Parliaments, and the numbers which ought to be given to the different acts or chapters, being now authoritatively fixed by Mr THOMSON'S publication, it has been followed in regard to these two points; but as our institutional writers and others have been in the practice of referring to the different acts, according to the years and chapters set forth in former editions, a comparative table is prefixed to the abridgement, shewing how the acts are dated and numbered in these editions, contrasted with that of Mr THOMSON.

## AUTHORITIES REFERRED TO, AND EXPLANATIONS OF ABBREVIATIONS.

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| Authorities.                                                                           | Abbreviations.      |
|----------------------------------------------------------------------------------------|---------------------|
| Acts of Sederunt, . . . . .                                                            | A. S.               |
| Alison's Practice of the Criminal Law, . . . . .                                       | Alison's Practice.  |
| Alison's Principles of the Criminal Law.                                               |                     |
| Balfour's Practices, . . . . .                                                         | Balfour.            |
| Bankton's Institute, . . . . .                                                         | Bankton.            |
| Barclay's Law of the Road.                                                             |                     |
| Bell's Principles, . . . . .                                                           | Bell's Pr.          |
| Bell's Dictionary and Digest, . . . . .                                                | Bell's Dict. & Dig. |
| Bell on Leases.                                                                        |                     |
| Bell's Commentaries, . . . . .                                                         | Bell's Com.         |
| Beveridge on Bill-Chamber.                                                             |                     |
| Blair's Treatise on Justices of the Peace.                                             |                     |
| Brodie's Notes on Stair.                                                               |                     |
| Burnett's Criminal Law, . . . . .                                                      | Burnett.            |
| Burton's Manual.                                                                       |                     |
| Connell on Tithes.                                                                     |                     |
| Craig de Feudis, . . . . .                                                             | Craig.              |
| Darling's Practice of the Court of Session, . . . . .                                  | Darling.            |
| Darling on the Powers and Duties of Messengers at Arms.                                |                     |
| Dunlop on Parochial Law.                                                               |                     |
| Elchies' Court of Session Reports, . . . . .                                           | Elch.               |
| Erskine's Principles, . . . . .                                                        | Erskine's Prin.     |
| Erskine's Institute, . . . . .                                                         | Erskine.            |
| Faculty of Advocates' Collection of Court of Session Reports, F. C.                    |                     |
| Flintoff's Rise and Progress of the Law of England.                                    |                     |
| Fordun.                                                                                |                     |
| Fountainhall's Court of Session Reports, . . . . .                                     | Fount.              |
| Hailes's Court of Session Reports, . . . . .                                           | Hailes.             |
| Hailes's Annals of Scotland.                                                           |                     |
| Hailes's Examination of the arguments for the high antiquity of Regiam Majestatem, &c. |                     |
| Hill on the Practice of the Judicatories of the Church of Scotland.                    |                     |
| Hume on the Criminal Law, . . . . .                                                    | Hume.               |
| Hunter on Landlord and Tenant.                                                         |                     |
| Hutchison on Justices of the Peace.                                                    |                     |
| Ivory's Notes on Erskine.                                                              |                     |
| Juridical Styles.                                                                      |                     |
| Lothian on Consistorial Law.                                                           |                     |

| Authorities.                                                      | Abbreviations.   |
|-------------------------------------------------------------------|------------------|
| Mackenzie's (Sir George) Observations. . .                        | Mackenzie's Obs. |
| Mackenzie's (Sir George) Institutes. . .                          | Mackenzie.       |
| Macallan's Notes on Erskine.                                      |                  |
| Maclean and Robinson's Reports of Appeals.                        |                  |
| Morison's Dictionary of Decisions, . . .                          | M.               |
| Municipal Corporations, Scotland, Commissioners' Report.          |                  |
| Pitmilley's Treatise on Poor Laws.                                |                  |
| Robertson's History of Scotland.                                  |                  |
| Ross's Lectures.                                                  |                  |
| Shaw and Dunlop's Court of Session Reports, . . .                 | S. & D.          |
| Shaw's Digest of Cases, . . .                                     | Shaw's Dig.      |
| Shaw and Maclean's Reports of Appeals.                            |                  |
| Skene's (Sir John) Preface to Scots Acts.                         |                  |
| Stair's Institute, . . .                                          | Stair.           |
| Stuart's Observations concerning the Public Law, &c. of Scotland. |                  |
| Supplement to Morison's Dictionary of Decisions, . . .            | Sup.             |
| Tait on the Law of Evidence.                                      |                  |
| Tait on Justices of the Peace.                                    |                  |
| Thomson on Bills.                                                 |                  |
| Thomson's Reports on the Records.                                 |                  |
| Tytler's History of Scotland.                                     |                  |
| Wallace's Thoughts on the Origin of Feudal Tenures.               |                  |
| Watson's Statute Law.                                             |                  |
| Wilson and Shaw's Reports of Appeals.                             |                  |
| Wight's Inquiry into the Rise and Progress of Parliament.         |                  |

# A COMPARATIVE TABLE

SHOWING

HOW THE ACTS OF THE PARLIAMENTS OF SCOTLAND INSERTED  
IN THE FOLLOWING ABRIDGEMENT ARE NUMBERED IN  
THE DIFFERENT EDITIONS OF THESE ACTS.

| Acts inserted in the Abridgement,<br>numbered according to Mr<br>Thomson's Edition. |       |       | Numbers of the same Acts in other<br>Editions. |               |               |
|-------------------------------------------------------------------------------------|-------|-------|------------------------------------------------|---------------|---------------|
| Year.                                                                               | Chap. | Page. | Edition 1566.                                  | Edition 1597. | Edition 1681. |
| 1424                                                                                | 1     | 1     | 1                                              | 1             | 1             |
| 1424                                                                                | 2     | 1     | 2                                              | 2             | 2             |
| 1424                                                                                | 6     | 1     | 6                                              | 6             | 6             |
| 1424                                                                                | 12    | 1     | 13                                             | 11            | 11            |
| 1424                                                                                | 13    | 2     | 14                                             | 12            | 12            |
| 1424                                                                                | 25    | 2     | 26                                             | 24            | 24            |
| Parlt. 2 <sup>d</sup> .                                                             |       |       |                                                |               |               |
| 1424                                                                                | 24    | 2     | 49                                             | 45            | 45            |
| 1425                                                                                | 3     | 3     | 53                                             | 48            | 48            |
| 1425                                                                                | 10    | 3     | 60                                             | { 54<br>55 }  | { 54<br>55 }  |
| 1425                                                                                | 16    | 3     | 66                                             | 59            | 59            |
| 1429                                                                                | 3     | 3     | 128                                            | 113           | 114           |
| 1429                                                                                | 15    | 4     | 138                                            | 124           | 124           |

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## A COMPARATIVE TABLE OF THE

| Acts inserted in the Abridgement,<br>numbered according to Mr<br>Thomson's Edition. |       |       | Numbers of the same Acts in other<br>Editions. |               |               |
|-------------------------------------------------------------------------------------|-------|-------|------------------------------------------------|---------------|---------------|
| Year.                                                                               | Chap. | Page. | Edition 1566.                                  | Edition 1597. | Edition 1681. |
| 1429                                                                                | 16    | 4     | 139                                            | 125           | 125           |
| 1429                                                                                | 20    | 4     | 143                                            | 129           | 129           |
| 1436                                                                                | 2     | 4     | 155                                            | 138           | 138           |
| 1436                                                                                | 4     | 5     | 157                                            | 140           | 140           |
| 1449                                                                                | 6     | 7     | { 17                                           | { 18          | 17            |
|                                                                                     |       |       | { 18                                           |               | 18            |
| 1457                                                                                | 34    | 7     | 97                                             | 87            | 86            |
| 1466                                                                                | 2     | 9     | 2                                              |               |               |
| 1469                                                                                | 2     | 9     | 34                                             | 26            | 27            |
| 1469                                                                                | 3     | 9     | 35                                             | 27            | 28            |
| 1469                                                                                | 4     | 10    | 36                                             | 28            | 29            |
| 1469                                                                                | 12    | 10    | 44                                             | 36            | 37            |
| 1469                                                                                | 18    | 11    | 50                                             | 39            | 40            |
| 1474                                                                                | 6     | 11    | 64                                             | 51            | 52            |
| 1474                                                                                | 8     | 11    | 66                                             | 53            | 54            |
| 1474                                                                                | 9     | 11    | 67                                             | 54            | 55            |
| 1474                                                                                | 10    | 12    | 68                                             | 55            | 56            |
| 1474                                                                                | 13    | 12    | 71                                             | 57            | 58            |
| 1474                                                                                | 15    | 12    | 73                                             | 59            | 60            |
| 1474                                                                                | 16    | 12    | 74                                             | 60            | 61            |

| Acts inserted in the Abridgement,<br>numbered according to Mr<br>Thomson's Edition. |       |       | Numbers of the same Acts in other<br>Editions. |                 |                 |
|-------------------------------------------------------------------------------------|-------|-------|------------------------------------------------|-----------------|-----------------|
| Year.                                                                               | Chap. | Page. | Edition 1566.                                  | Edition 1597.   | Edition 1661.   |
| 1475                                                                                | 4     | 13    | 78                                             | 63              | 64              |
| 1475                                                                                | 8     | 13    | 82                                             | 66              | 67              |
| 1478                                                                                | 6     | 14    | { 92 of<br>1477                                | { 73 of<br>1477 | { 74 of<br>1477 |
| 1478                                                                                | 11    | 14    | { 97 of<br>1477                                | { 78 of<br>1477 | { 79 of<br>1477 |
| 1481                                                                                | 14    | 14    | 101                                            | 83              | 84              |
| 1487                                                                                | 6     | 15    | 121                                            | 101             | 101             |
| 1487                                                                                | 13    | 15    | 128                                            | 107             | 107             |
| 1487                                                                                | 17    | 15    | 132                                            | 111             | 111             |
| 1488                                                                                | 16    | 17    | 15                                             | —               | —               |
| 1489                                                                                | 16    | 17    | 32                                             | 15              | 15              |
| 1491                                                                                | 6     | 18    | 47                                             | 25              | 25              |
| 1491                                                                                | 7     | 18    | 48                                             | 26              | 26              |
| 1493                                                                                | 22    | 19    | 83                                             | 51              | 51              |
| 1496                                                                                | 6     | 19    | 90                                             | { 57 of<br>1494 | { 57 of<br>1494 |
| 1503                                                                                | 9     | 19    | 99                                             | 65              | 65              |
| 1503                                                                                | 13    | 20    | 103                                            | 69              | 69              |
| 1503                                                                                | 21    | 20    | 111                                            | 76              | 76              |



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## A COMPARATIVE TABLE OF THE

| Acts inserted in the Abridgement,<br>numbered according to Mr<br>Thomson's Edition. |       |       | Numbers of the same Acts in other<br>Editions. |                                   |               |
|-------------------------------------------------------------------------------------|-------|-------|------------------------------------------------|-----------------------------------|---------------|
| Year.                                                                               | Chap. | Page. | Edition 1566.                                  | Edition 1597.                     | Edition 1681. |
| 1503                                                                                | 22    | 21    | 112                                            | 77                                | 77            |
| 1503                                                                                | 24    | 21    | 114                                            | 79                                | 79            |
| 1503                                                                                | 37    | 21    | 126                                            | 91                                | 91            |
| 1503                                                                                | 39    | 21    | 128                                            | 93                                | 93            |
| 1503                                                                                | 40    | 22    | 129                                            | 94                                | 94            |
| 1503                                                                                | 45    | 22    | 134                                            | 98                                | 98            |
| 1532                                                                                | 2     | 23    | 6                                              | { 36 to 41 }<br>of 1537 of 1537 } |               |
| 1535                                                                                | 11    | 24    | 13                                             | 12                                | 13            |
| 1535                                                                                | 14    | 24    | 16                                             | 14                                | 15            |
| 1535                                                                                | 38    | 25    | 35                                             | 31                                | 32            |
| 1540                                                                                | 10    | 26    | 45                                             | 75                                | 75            |
| 1540                                                                                | 12    | 26    | 47                                             | 77                                | 77            |
| 1540                                                                                | 15    | 26    | 50                                             | 80                                | 80            |
| Parlt. 2 <sup>d</sup> .                                                             |       |       |                                                |                                   |               |
| 1540                                                                                | 10    | 27    | 72                                             | 93                                | 93            |
| 1540                                                                                | 22    | 27    | 84                                             | 104                               | 104           |
| 1540                                                                                | 23    | 28    | 85                                             | 105                               | 105           |
| 1540                                                                                | 24    | 28    | 86                                             | 106                               | 106           |
| 1540                                                                                | 30    | 29    | 92                                             | 111                               | 111           |

ACTS OF THE PARLIAMENTS OF SCOTLAND.

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| Acts inserted in the Abridgement,<br>numbered according to Mr<br>Thomson's Edition. |       |       | Numbers of the same Acts in other<br>Editions. |               |               |
|-------------------------------------------------------------------------------------|-------|-------|------------------------------------------------|---------------|---------------|
| Year.                                                                               | Chap. | Page. | Edition 1566.                                  | Edition 1597. | Edition 1681. |
| 1540                                                                                | 37    | 29    | 98                                             | 117           | 117           |
| 1540                                                                                | 38    | 30    | 99                                             | 118           | 118           |
| 1540                                                                                | 40    | 30    | 101                                            | 120           | 120           |
| 1540                                                                                | 45    | 30    | 106                                            | 124           | 124           |
| 1551                                                                                | 11    | 31    | 20                                             | 19            | 19            |
| 1551                                                                                | 12    | 31    | 21                                             | 20            | 20            |
| 1551                                                                                | 17    | 31    | 26                                             | 22            | 22            |
| 1555                                                                                | 3     | 32    | 3                                              | 30            | 30            |
| 1555                                                                                | 4     | 32    | 4                                              | 31            | 31            |
| 1555                                                                                | 6     | 33    | 6                                              | 33            | 33            |
| 1555                                                                                | 7     | 33    | 7                                              | 34            | 34            |
| 1555                                                                                | 8     | 34    | 8                                              | 35            | 35            |
| 1555                                                                                | 11    | 34    | 11                                             | 38            | 38            |
| 1555                                                                                | 12    | 34    | 12                                             | 39            | 39            |
| 1555                                                                                | 15    | 36    | 15                                             | 41            | 41            |
| 1555                                                                                | 16    | 36    | 16                                             | 42            | 42            |
| 1555                                                                                | 18    | 36    | 18                                             | 44            | 44            |
| 1555                                                                                | 22    | 37    | 22                                             | 48            | 47            |
| 1555                                                                                | 27    | 38    | 27                                             | 54            | 53            |
| 1555                                                                                | 36    | 38    | 36                                             | 58            | 58            |

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## A COMPARATIVE TABLE OF THE

| Acts inserted in the Abridgement,<br>numbered according to Mr<br>Thomson's Edition. |       |       | Numbers of the same Acts in other<br>Editions. |               |               |
|-------------------------------------------------------------------------------------|-------|-------|------------------------------------------------|---------------|---------------|
| Year.                                                                               | Chap. | Page. | Edition 1566.                                  | Edition 1597. | Edition 1681. |
| 1557                                                                                | 4     | 38    | —                                              | 62            | 62            |
| 1563                                                                                | 3     | 39    | 2                                              | 68            | 68            |
| 1563                                                                                | 8     | 40    | 7                                              | 72            | 72            |
| 1563                                                                                | 10    | 40    | 9                                              | 74            | 74            |
| 1563                                                                                | 12    | 41    | 11                                             | 76            | 76            |
| 1563                                                                                | 17    | 41    | 15                                             | 79            | 79            |
|                                                                                     |       |       | Edition<br>1568                                |               |               |
| 1567                                                                                | 3     | 43    | 3                                              | 2             | 2             |
| 1567                                                                                | 4     | 43    | 4                                              | 3             | 3             |
| 1567                                                                                | 7     | 44    | 7                                              | 7             | 7             |
| 1567                                                                                | 12    | 44    | 12                                             | —             | —             |
| 1567                                                                                | 13    | 45    | 13                                             | 12            | 12            |
| 1567                                                                                | 15    | 46    | 15                                             | 14            | 14            |
| 1567                                                                                | 16    | 46    | 16                                             | 15            | 15            |
| 1567                                                                                | 22    | 46    | 22                                             | 18            | 18            |
| 1567                                                                                | 30    | 47    | 30                                             | 23            | 23            |
| 1567                                                                                | 34    | 47    | 34                                             | 27            | 27            |
| 1567                                                                                | 37    | 47    | 37                                             | 29            | 29            |
| 1567                                                                                | 40    | 47    | 41                                             | 33            | 33            |

ACTS OF THE PARLIAMENTS OF SCOTLAND.

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| Acts inserted in the Abridgement<br>numbered according to Mr<br>Thomson's Edition. |       |       | Numbers of the same Acts in other<br>Editions. |               |               |
|------------------------------------------------------------------------------------|-------|-------|------------------------------------------------|---------------|---------------|
| Year.                                                                              | Chap. | Page. | Edition 1575.                                  | Edition 1597. | Edition 1681. |
|                                                                                    |       |       | Edition<br>1575                                |               |               |
| 1572                                                                               | 5     | 48    | 5                                              | 48            | 48            |
| 1572                                                                               | 15    | 49    | 12                                             | 54            | 54            |
| 1573                                                                               | 1     | 51    | 1                                              | 55            | 55            |
|                                                                                    |       |       | Edition<br>1579                                |               |               |
| 1578                                                                               | 6     | 52    | 2                                              | 62            | 62            |
| 1578                                                                               | 11    | 52    | 4                                              | 64            | 64            |
| 1578                                                                               | 13    | 53    | 6                                              | 66            | 66            |
| 1579                                                                               | 7     | 54    | 2                                              | 69            | 69            |
| 1579                                                                               | 8     | 54    | 3                                              | 70            | 70            |
| 1579                                                                               | 12    | 55    | 7                                              | 74            | 74            |
| 1579                                                                               | 13    | 60    | 8                                              | 75            | 75            |
| 1579                                                                               | 16    | 62    | 12                                             | 78            | 78            |
| 1579                                                                               | 18    | 63    | 14                                             | 80            | 80            |
| 1579                                                                               | 19    | 63    | 15                                             | 81            | 81            |
| 1579                                                                               | 20    | 63    | 16                                             | 82            | 82            |
| 1579                                                                               | 21    | 63    | 17                                             | 83            | 83            |
| 1579                                                                               | 22    | 64    | 18                                             | 84            | 84            |
| 1579                                                                               | 26    | 65    | 22                                             | 88            | 88            |

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## A COMPARATIVE TABLE OF THE

| Acts inserted in the Abridgement,<br>numbered according to Mr<br>Thomson's Edition. |       |       | Numbers of the same Acts in other<br>Editions. |               |               |
|-------------------------------------------------------------------------------------|-------|-------|------------------------------------------------|---------------|---------------|
| Year.                                                                               | Chap. | Page. | Edition 1579.                                  | Edition 1597. | Edition 1681. |
| 1579                                                                                | 27    | 65    | 23                                             | 89            | 89            |
| 1579                                                                                | 37    | 66    | 29                                             | 92            | 92            |
| 1579                                                                                | 38    | 67    | 30                                             | 93            | 93            |
| 1579                                                                                | 45    | 68    | 31                                             | 94            | 94            |
|                                                                                     |       |       | Edition<br>1582                                |               |               |
| 1581                                                                                | 2     | 69    | 2                                              | 100           | 100           |
| 1581                                                                                | 4     | 69    | 4                                              | 102           | 102           |
| 1581                                                                                | 7     | 70    | 7                                              | 105           | 105           |
| 1581                                                                                | 14    | 70    | 14                                             | 110           | 110           |
| 1581                                                                                | 17    | 71    | 17                                             | —             | —             |
| 1581                                                                                | 22    | 71    | 22                                             | 117           | 117           |
| 1581                                                                                | 23    | 73    | 23                                             | 117           | 118           |
| 1581                                                                                | 24    | 74    | 24                                             | 118           | 119           |
| 1581                                                                                | 26    | 75    | 26                                             | 119           | 119           |
|                                                                                     |       |       | Edition<br>1584                                |               |               |
| 1584                                                                                | 2     | 76    | 2                                              | 129           | 129           |
| 1584                                                                                | 3     | 76    | 3                                              | 130           | 130           |
| 1584                                                                                | 4     | 77    | 4                                              | 131           | 131           |
| 1584                                                                                | 5     | 77    | 5                                              | 132           | 132           |

ACTS OF THE PARLIAMENTS OF SCOTLAND.

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| Acts inserted in the Abridgement,<br>numbered according to Mr<br>Thomson's Edition. |       |       | Numbers of the same Acts in other<br>Editions. |                      |                      |
|-------------------------------------------------------------------------------------|-------|-------|------------------------------------------------|----------------------|----------------------|
| Year.                                                                               | Chap. | Page. | Edition 1684.                                  | Edition 1697.        | Edition 1681.        |
| 1584                                                                                | 6     | 79    | 6                                              | 133                  | 133                  |
| 1584                                                                                | 8     | 79    | 8                                              | 134                  | 134                  |
| 1584                                                                                | 17    | 80    | 17                                             | 140                  | 140                  |
| Parlt. 2 <sup>d</sup> .                                                             |       |       |                                                |                      |                      |
| 1584                                                                                | 6     | 81    | . . .                                          | 2                    | 2                    |
| 1584                                                                                | 10    | 84    | . . .                                          | 3                    | 3                    |
| 1584                                                                                | 11    | 85    | . . .                                          | 4                    | 4                    |
| 1585                                                                                | 1     | 85    | . . .                                          | 10                   | 10                   |
| 1587                                                                                | 6     | 85    | . . .                                          | 27                   | 27                   |
| 1587                                                                                | 8     | 87    | . . .                                          | 29                   | 29                   |
| 1587                                                                                | 29    | 96    | . . .                                          | 45                   | 45                   |
| 1587                                                                                | 30    | 98    | . . .                                          | 46                   | 46                   |
| 1587                                                                                | 37    | 100   | . . .                                          | 54                   | 54                   |
| 1587                                                                                | 43    | 100   | . . .                                          | 59                   | 59                   |
| 1587                                                                                | 44    | 100   | . . .                                          | 60                   | 60                   |
| 1587                                                                                | 54    | 101   | . . .                                          | { from 69<br>to 80 } | { from 69<br>to 80 } |
| 1587                                                                                | 57    | 101   | . . .                                          | { from 81<br>to 91 } | { from 81<br>to 91 } |
| 1587                                                                                | 114   | 103   | . . .                                          | 112                  | 112                  |

## A COMPARATIVE TABLE OF THE

| Acts inserted in the Abridgement,<br>numbered according to Mr<br>Thomson's Edition. |       |       | Numbers of the same Acts in other<br>Editions. |               |               |
|-------------------------------------------------------------------------------------|-------|-------|------------------------------------------------|---------------|---------------|
| Year.                                                                               | Chap. | Page. |                                                | Edition 1597. | Edition 1681. |
| 1592                                                                                | 8     | 103   | . . .                                          | 114           | 114           |
| 1592                                                                                | 9     | 106   | . . .                                          | 115           | 115           |
| 1592                                                                                | 10    | 106   | . . .                                          | 116           | 116           |
| 1592                                                                                | 11    | 107   | . . .                                          | 117           | 117           |
| 1592                                                                                | 12    | 108   | . . .                                          | 118           | 118           |
| 1592                                                                                | 17    | 108   | . . .                                          | 122           | 122           |
| 1592                                                                                | 28    | 108   | . . .                                          | 124           | 124           |
| 1592                                                                                | 29    | 110   | . . .                                          | 125           | 125           |
| 1592                                                                                | 30    | 111   | . . .                                          | 126           | 126           |
| 1592                                                                                | 31    | 112   | . . .                                          | —             | —             |
| 1592                                                                                | 50    | 113   | . . .                                          | 132           | 132           |
| 1592                                                                                | 54    | 113   | . . .                                          | 136           | 136           |
| 1592                                                                                | 56    | 114   | . . .                                          | 138           | 138           |
| 1592                                                                                | 59    | 115   | . . .                                          | 139           | 139           |
| 1592                                                                                | 60    | 115   | . . .                                          | 140           | 140           |
| 1592                                                                                | 61    | 115   | . . .                                          | 141           | 141           |
| 1592                                                                                | 62    | 115   | . . .                                          | 142           | 142           |
| 1592                                                                                | 66    | 116   | . . .                                          | 145           | 145           |
| 1592                                                                                | 68    | 117   | . . .                                          | 146           | 146           |
| 1592                                                                                | 69    | 117   | . . .                                          | 147           | 147           |

ACTS OF THE PARLIAMENTS OF SCOTLAND.

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| Acts inserted in the Abridgement,<br>numbered according to Mr<br>Thomson's Edition. |       |       | Numbers of the same Acts in other<br>Editions. |               |               |
|-------------------------------------------------------------------------------------|-------|-------|------------------------------------------------|---------------|---------------|
| Year.                                                                               | Chap. | Page. |                                                | Edition 1597. | Edition 1681. |
| 1592                                                                                | 70    | 118   | . . .                                          | 148           | 148           |
| 1592                                                                                | 72    | 119   | . . .                                          | 150           | 150           |
| 1592                                                                                | 73    | 119   | . . .                                          | 151           | 151           |
| 1592                                                                                | 75    | 120   | . . .                                          | 153           | 153           |
| 1592                                                                                | 76    | 120   | . . .                                          | 154           | 154           |
| 1592                                                                                | 89    | 121   | . . .                                          | 158           | 158           |
| 1593                                                                                | 8     | 122   | . . .                                          | 161           | 161           |
| 1593                                                                                | 13    | 122   | . . .                                          | 166           | 166           |
| 1593                                                                                | 22    | 122   | . . .                                          | 173           | 173           |
| 1593                                                                                | 25    | 123   | . . .                                          | 175           | 175           |
| 1593                                                                                | 34    | 124   | . . .                                          | 177           | 177           |
| 1593                                                                                | 39    | 124   | . . .                                          | 181           | 181           |
|                                                                                     |       |       | Edition<br>1594                                |               |               |
| 1594                                                                                | 6     | 124   | 4                                              | 196           | 196           |
| 1594                                                                                | 9     | 125   | 7                                              | 199           | 199           |
| 1594                                                                                | 15    | 125   | 13                                             | 205           | 205           |
| 1594                                                                                | 22    | 126   | 20                                             | 212           | 212           |
| 1594                                                                                | 24    | 126   | 22                                             | 214           | 214           |
| 1594                                                                                | 26    | 127   | 24                                             | 216           | 216           |
| 1594                                                                                | 27    | 127   | 25                                             | 217           | 217           |



| Acts inserted in the Abridgement,<br>numbered according to Mr<br>Thomson's Edition. |       |       | Numbers of the same Acts in other<br>Editions. |                 |               |
|-------------------------------------------------------------------------------------|-------|-------|------------------------------------------------|-----------------|---------------|
| Year.                                                                               | Chap. | Page. | Edition 1594.                                  | Edition 1597.   | Edition 1681. |
| 1594                                                                                | 30    | 128   | 28                                             | 220             | 220           |
| 1594                                                                                | 32    | 128   | 30                                             | 222             | 222           |
| 1594                                                                                | 35    | 128   | 33                                             | 225             | 225           |
| 1594                                                                                | 36    | 129   | 34                                             | 226             | 226           |
| 1597                                                                                | 3     | 129   |                                                | 232             | 232           |
| 1597                                                                                | 17    | 130   | . . .                                          | 246             | 246           |
| 1597                                                                                | 18    | 130   | . . .                                          | 247             | 247           |
| 1597                                                                                | 35    | 131   | . . .                                          | 264             | 264           |
| 1597                                                                                | 39    | 132   | . . .                                          | 268             | 268           |
| 1597                                                                                | 40    | 132   | . . .                                          | 269             | 269           |
| 1597                                                                                | 41    | 132   | . . .                                          | 270             | 270           |
| 1597                                                                                | 44    | 132   | . . .                                          | 273             | 273           |
| 1597                                                                                | 46    | 132   | . . .                                          | 275             | 275           |
| 1597                                                                                | 47    | 133   | . . .                                          | 276             | 276           |
|                                                                                     |       |       |                                                | Edition<br>1611 |               |
| 1600                                                                                | 12    | 133   | . . .                                          | 4               | 4             |
| 1600                                                                                | 15    | 134   | . . .                                          | 7               | 7             |
| 1600                                                                                | 22    | 134   | . . .                                          | 13              | 13            |
| 1600                                                                                | 23    | 135   | . . .                                          | 14              | 14            |
| 1600                                                                                | 28    | 135   | . . .                                          | 19              | 19            |

ACTS OF THE PARLIAMENTS OF SCOTLAND.

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| Acts inserted in the Abridgement,<br>numbered according to Mr<br>Thomson's Edition. |       |       | Numbers of the same Acts in other<br>Editions. |                 |               |
|-------------------------------------------------------------------------------------|-------|-------|------------------------------------------------|-----------------|---------------|
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| 1606                                                                                | 9     | 137   | . . .                                          | 10              | 10            |
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| 1606                                                                                | 16    | 138   | . . .                                          | 17              | 17            |
| 1607                                                                                | 6     | 139   | . . .                                          | 3               | 3             |
| 1607                                                                                | 13    | 139   | . . .                                          | 6               | 6             |
| 1609                                                                                | 14    | 140   | . . .                                          | 7               | 7             |
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| 1661                                                                                     | 88    | 237   | 24                         |                                                      |  |  |      | 1661                                                                                     | 344   | 264   | 62                          |                                                      |  |  |   |
| 1661                                                                                     | 126   | 238   | 15                         |                                                      |  |  |      |                                                                                          |       |       | Edition<br>1663 and<br>1681 |                                                      |  |  |   |
| 1661                                                                                     | 211   | 240   | —                          |                                                      |  |  |      |                                                                                          |       |       |                             |                                                      |  |  |   |
| 1661                                                                                     | 215   | 241   | 20                         |                                                      |  |  | 1663 | 3                                                                                        | 269   |       |                             |                                                      |  |  | 9 |
| 1661                                                                                     | 216   | 241   | 21                         |                                                      |  |  | 1663 | 4                                                                                        | 270   |       | 10                          |                                                      |  |  |   |
| 1661                                                                                     | 217   | 242   | 22                         |                                                      |  |  | 1663 | 12                                                                                       | 270   |       | 6                           |                                                      |  |  |   |
| 1661                                                                                     | 218   | 242   | 29                         |                                                      |  |  | 1663 | 31                                                                                       | 271   |       | 21                          |                                                      |  |  |   |
| 1661                                                                                     | 239   | 243   | 26                         |                                                      |  |  | 1663 | 34                                                                                       | 272   |       | 28                          |                                                      |  |  |   |
| 1661                                                                                     | 242   | 243   | 30                         |                                                      |  |  | 1663 | 52                                                                                       | 275   |       | 16                          |                                                      |  |  |   |
| 1661                                                                                     | 243   | 244   | 31                         |                                                      |  |  | 1663 | 66                                                                                       | 277   |       | 15                          |                                                      |  |  |   |
| 1661                                                                                     | 244   | 244   | 32                         |                                                      |  |  |      |                                                                                          |       |       | Edition<br>1669 and<br>1681 |                                                      |  |  |   |
| 1661                                                                                     | 246   | 245   | 34                         |                                                      |  |  |      |                                                                                          |       |       |                             |                                                      |  |  |   |
| 1661                                                                                     | 247   | 246   | —                          |                                                      |  |  | 1669 | 4                                                                                        | 279   |       |                             |                                                      |  |  | 3 |
| 1661                                                                                     | 260   | 246   | 23                         |                                                      |  |  | 1669 | 5                                                                                        | 280   |       | 4                           |                                                      |  |  |   |
| 1661                                                                                     | 277   | 247   | 44                         |                                                      |  |  | 1669 | 7                                                                                        | 280   |       | 6                           |                                                      |  |  |   |
| 1661                                                                                     | 282   | 249   | 19                         |                                                      |  |  | 1669 | 14                                                                                       | 280   |       | 9                           |                                                      |  |  |   |
| 1661                                                                                     | 283   | 249   | 51                         |                                                      |  |  | 1669 | 15                                                                                       | 281   |       | 10                          |                                                      |  |  |   |
| 1661                                                                                     | 284   | 250   | 41                         |                                                      |  |  | 1669 | 37                                                                                       | 282   |       | 16                          |                                                      |  |  |   |
| 1661                                                                                     | 331   | 251   | 54                         |                                                      |  |  | 1669 | 38                                                                                       | 285   |       | 17                          |                                                      |  |  |   |
| 1661                                                                                     | 338   | 252   | 38                         |                                                      |  |  | 1669 | 39                                                                                       | 285   |       | 18                          |                                                      |  |  |   |

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| 1672                                                                          | 40    | 294   | 16                                          | 1685                                                                          | 15    | 323   | 15                                          |
| 1672                                                                          | 42    | 307   | 18                                          | 1685                                                                          | 25    | 323   | 21                                          |
| 1672                                                                          | 45    | 310   | 19                                          | 1685                                                                          | 26    | 324   | 22                                          |
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| 1672                                                                          | 58    | 313   | 22                                          | 1685                                                                          | 40    | 327   | 35                                          |
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|                                                                               |       |       |                                             | 1685                                                                          | 56    | 328   | 43                                          |
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| 1686                                                                                     | 5     | 329   | 4                                                    | 1690                                                                                     | 59    | 370   | 29                                                   |
| 1686                                                                                     | 13    | 329   | 8                                                    | 1690                                                                                     | 61    | 371   | 32                                                   |
| 1686                                                                                     | 21    | 330   | 11                                                   | 1690                                                                                     | 63    | 371   | 30                                                   |
| 1686                                                                                     | 29    | 330   | 17                                                   | 1690                                                                                     | 96    | 373   | 42                                                   |
| 1686                                                                                     | 30    | 330   | 18                                                   | 1690                                                                                     | 98    | 374   | 39                                                   |
| 1686                                                                                     | 33    | 331   | 19                                                   | Parl <sup>t</sup> 1 <sup>st</sup><br>Sess 3 <sup>d</sup>                                 |       |       |                                                      |
| 1686                                                                                     | 34    | 331   | 22                                                   |                                                                                          |       |       |                                                      |
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| 1689                                                                                     | 30    | 340   | 15                                                   |                                                                                          |       |       | 13                                                   |
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| Parl <sup>t</sup> 1 <sup>st</sup><br>Sess 2 <sup>d</sup>                                 |       |       |                                                      | 1693                                                                                     | 38    | 376   | —                                                    |
| 1690                                                                                     | 7     | 365   | 5                                                    | 1693                                                                                     | 39    | 377   | 24                                                   |
| 1690                                                                                     | 16    | 367   | 13                                                   | 1693                                                                                     | 40    | 378   | —                                                    |
| 1690                                                                                     | 49    | 367   | 20                                                   | 1693                                                                                     | 41    | 378   | 26                                                   |
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| 1695                                                                          | 69    | 389   | 38                                          | 1696                                                                         | 31    | 398   | 31                                          |
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ACTA PARLIAMENTORUM  
REGIS JACOBI PRIMI.

---

APUD PERTH,

XXVI DIE MAII, A.D. M,CCCC,XXIV.

*1. The freedome of the halie Kirke.*

IN the First to the honour of God and halie Kirk; It is statute and ordained, that the halie Kirke joyis and bruke, and the Ministers of it, their aulde Privileges and freedomes. And that na man let them to set their landes and teindes, under the paine that may follow, be Spiritual Law, or Temporal.<sup>1</sup>

*2. Peace suld be keeped within the Realme.*

ITEM, That firme & sicker peace be keeped and halden throw all the Realme, and amang all and sindrie Lieges and subjects, to our Sovereine Lord the King, and that na man take on hand in time to cum, to moove or make weir against uther, under all paine that may follow be course of common law.<sup>2</sup>

*6. Of the Ministers of Law within the Realme, and offices given in heritage.*

ITEM, It is ordained that there be maid Officiars and Ministers of Law, throw all the Realme, that can, or may halde the Lawe to the Kingis commounes; and sik as hes sufficientlie of their awin; quhair throw they may be punished gif they trespasse. And gif onie be infest of sik offices of before, and ar not sufficient to minister therein in proper persone; that utheris be ordained in their steedes, for the quhilk they that hes sik offices of the King in fee, be halden to answer to him, gif they trespasse.<sup>3</sup>

*12. Of Cruves, Zaires, and Satterdaies slop.*

ITEM, That all Cruves and zaires set in fresh water, quhair the sea fillis and ebbis, the quhilk destroyis the frie of all fisches, be destroyed and put awaie for ever

<sup>1</sup> The ancient Scottish Parliaments, both before and after the Reformation, usually began their proceedings with a general act concerning the Church. The present may serve as an example.

<sup>2</sup> This act was passed at a time when the Scottish barons were in the custom of making war upon each other in the most lawless manner, and to repress the evils thence arising.

<sup>3</sup> Mr Erskine, in his Institutes, b. i. tit. ii. § 14, refers to this act, along with act 1469, ch. 2, in proof that "a deputy or substitute acts at the peril of the principal judge." The only part of the act last mentioned appearing still in force, is the part thus referred to. It is in these words: "And that ilk judge ordinar, schireffe, or ony utheris, sall be haldene to answeire for their deputes as themselfe."

mair: Not againe standing ony priviledge and freedome given in the contrarie, under the paine of ane hundreth shillinges. And they that hes cruves in fresh waters, that they gar keepe the Lawes, anentes Satterdaies slop; and suffer them not to stande in forbidden time, under the said paine. And that ilk heck of the foresaidis cruves be three inche wide, as the aulde statute requiris.<sup>4</sup>

13. *Mines of Gold and silver pertainis to the King.*

ITEM, Gif onie mine of gold or silver be founden in onie Lordis Landes of the Realme, and it may be proved that three halfe pennies of silver may be fined out of the pound of leade: THE Lordes of Parliament consentis, that sik mine be the Kingis, as is usuall of uther Realmes.<sup>5</sup>

25. *Of Hostillaries in Burrowes and through-fares.*

ITEM, It is ordained, that in all Burrow Townes of the Realme, and through-faires, quhair commoun passages are, that their be ordained Hostillares & receipters, havand stables and chalmers. And that men find with them bread and aile, and all uther fude, alsweill to horse as men, for reasonable price, after the chaipes of the countrie.<sup>6</sup>

APUD PERTH,

XII DIE MARTII, A.D. M,CCCC,XXIV.

24. *Anent complaintes to be decided before the Judge ordinar.*

ITEM, As anent billes of complaint, quhilkis may not be determined be the Parliament, for diverse causes belanging the commoun profite of the Realme: It is ordained that the Billes of complaint be execute and determined be the judges and Officiares of the Courtes, quhom to they perteine of Law, outhur Justice, Chalmerslane, Schireffes, Baillies of Burrowes, Barronnies, or uther Spiritual judges, gif it effeiris to them. To the quhilkis judges all and sindrie, the King sall give strait commandement, alsweill within Regalities, as out-with, under all paine and charge that may follow, that alsweill to pure as to rich, but fraude or guile, they doe full

<sup>4</sup> This act appears, from Mr Thomson's edition of the Scots Acts, to have been declared to endure not *for ever mair*, as in the text, but *for three years*. It was continued for three years by 1427, ch. 6, and made perpetual by 1478, ch. 6, which see. See also Erskine, book ii. tit. vi. § 15; Bell's Dict. and Dig., art "Salmon Fishing;" Bell's Principles, § 1116, *et seq.*, and authorities there referred to.

The salmon fisheries in the river Tweed, and in the streams and waters that run into or communicate therewith, are now principally regulated by 11th Geo. IV. ch. 54, and 6th Will. IV. c. 65 (local and personal acts). The fisheries in the arm of the sea between the county of Cumberland and the counties of Dumfries and Wigton, and the stewartry of Kirkcudbright, and the fisheries in the several streams and waters which run into or communicate with the said arm of the sea, are regulated by 44th Geo. III. ch. 45 (a local and personal act); and the other salmon fisheries in Scotland by 9th Geo. IV. ch. 39.

<sup>5</sup> This act was modified by 1592, ch. 31, which see; and the two following decisions, viz. Duke of Argyle v. Murray, 7th December 1739, M. 13,526; and the Earl of Hopetoun v. Officers of State, 4th January 1750, M. 13,527. See also Erskine, b. ii. tit. vi. § 16.

<sup>6</sup> This act may be considered the foundation of the law under which innkeepers are bound to give accommodation and entertainment on reasonable terms. It was renewed by 1427, c. 3. The same general principle is enforced by 1535, ch. 23.

law and Justice. And gif there bee onie pure creature, for faulte of cunning, or expenses, that cannot, nor may not follow his cause, the King for the love of GOD, sall ordaine the judge, before quhom the cause suld be determined, to pur-wey and get a leill and a wise Advocate, to follow sik pure creatures causes: And gif sik causes be obtained, the wranger sal assyith baith the partie skaithed, and the Advocatis coastes and travel. And gif the Judge refusis to do the Law eavenlie, as is before said, the partie compleinand, sall have recourse to the King, quha sall see rigorously punished sik Judges, that it sall be exemple till all uthers.<sup>7</sup>

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APUD PERTH,

XI DIE MARTII, A.D. M,CCCC,XXV.

3. *That all the Kingis Lieges live and be governed be the Lawes of the Realme.*

ITEM, It is ordained be the King, be consent and deliverance of the three Estaites, that all and sindrie the Kingis Lieges of the Realme live and be governed under the Kingis Lawes & statutes of the Realme allanerlie: and under na particular Laws, nor special Priviledge, nor be na Lawes of uther Countries nor Realmes.

10. *Of persones to be chosen to examine the buikis of Law, and reforme them.*

ITEM, It is statute and ordained, that sex wise men and discreete, of ilk ane of the three Estaites, quhilks knowis the Lawes best, sall be chosen (sen fraude and guile aicht to help na man) that sal see and examine the Buiks of Law, that is to say, *Regiam Majestatem*, and *Quoniam Attachiamenta*. And mend the Lawes, that neids mendment.<sup>8</sup>

16. *Ferriers and Boate-men suld have Brigges.*

ITEM, It is statute and ordained, that all Boate-men and ferryares, quhair Horse are ferryed, sall have for ilke boate a treene-brigge, quhair-with they maie receive within their Boates, travelleres Horse through the Realme, unhurte and un-skaithed, under the paine of fourtie shillinges of ilk boate, fra *Whit-sundais* forth nixt to cum.<sup>9</sup>

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APUD PERTH,

VI DIE MARTII, A.D. M,CCCC,XXIX.

3. *Anent exceptiones and substantial heades of the Briefe.*

ITEM, It is statute and ordained, that fra thine furth their sall nane exception availe against the Kingis briefes, quhidder they be lang written or schort, swa

<sup>7</sup> This act appears to be the original authority for appointing counsel and agents for the poor, and for applications to the Crown against judges for malversation in office.

<sup>8</sup> This act is interesting, in respect that it contains a recognition of the *Regiam Majestatem* and the *Quoniam Attachiamenta* as books of law of this realm. See Erskine, b. i. tit. i. § 36.

<sup>9</sup> The provision contained in this act is further enforced by the following statutes, viz. 1467, ch. 3, and 1469, ch. 17, and 1474, ch. 17, which see in Mr Thomson's edition of the Scots Acts, vol. ii. p. 89, 97, and 107.

that they halde the forme of the brieve, statute in the Law of before, congruit & not raised, nor blobbed in suspect places, that is to say, in the name and the surname of the follower, & of the defender and the name of the land, or of the cause, upon the quhilk the brieve was purchased, and the dait.<sup>10</sup>

15. *Anent shippes that breakis in this Realme.*

ITEM, It is statute and ordained, that Schippes that breakis in this Countrie, the Schippe and the gudes sall be escheit to the King, gif they be of thay Countreies, the quhilkis usis and keipis the samin law of broken Schippes in their awin lande, and gif they be Shippes of onie land that keipis not that law, they sall have the samin favour here, as they keepe to Schippes of this land broken within them.<sup>11</sup>

16. *That Advocates and Fore-speakeres in temporal Courts sall sweare.*

Throw the consent of the hail Parliament it is statute and ordained, that Advocates and Fore-speakers in Temporal courtes, and alsua the parties that they pleade for, gif they be present, in all causes that they pleade, in the beginning or he be heard in the cause, he sall sweare, that the cause he trowis is gud and leill, that he sall pleade. And gif the principal partie be absent, the Advocate sall sweare in the saule of him, after as is contained in thir meters.

*Illud juretur, quod lis sibi justa videtur.*

*Et si quaeretur verum, non inficietur.*

*Nil promittetur, nec falsa probatio detur.*

*Ut lis tardetur, dilatio nulla petetur.*<sup>12</sup>

20. *Of sovertie asked be onie partie of uthers.*

ITEM, It is statute and ordained, that gif onie of the Kingis lieges hes ony doubt of the life, outhir be deed or mannance, or violent presumption, and he ask sovertie of the partie, that the plaint is maid upon, sa that the partie plantife mak pruiif of the deed, or mannance, or of the violent presumption maid or done till him be his aith, or uther sufficient pruiife, and the Schireffe do not that effeiris till his office in that case, he sall be in fourtie pund to the King, and assyith the partie.<sup>13</sup>

APUD EDINBURGH,

XXII OCTOBRIS, A.D. M,CCCC,XXXVI.

2. *That assisors suld sweare.*

ITEM, It is statute and ordained, that all judges sall garr the assisoures suear in the making of their aith, quhen they, are charged to assises, that they nouthir have

<sup>10</sup> This act may be held also applicable to summonses, as coming in place of a certain class of brieves, if vitiated in *essentialibus*. See *Taylor v. Malcolm*, 5th March 1829, 7 S. & D. 547.

<sup>11</sup> See *Stair*, b. iii. tit. iii. § 27. *Erskine*, b. ii. tit. i. § 13. *Jacobson v. Earl of Crawford*. 20th January 1674, M. 16,792.

<sup>12</sup> This act may possibly be considered still in force as to the principals in the suit, as modified by A. S. 13th January 1692. See, however, *Darling's Forms of Process*, p. 242, *et seq.* With respect to advocates and forespeakers, the act is in desuetude. See *Macqueen*, 20th December 1674, V. Sup. p. 902.

<sup>13</sup> This act appears to be the foundation of the law of lawburrows.

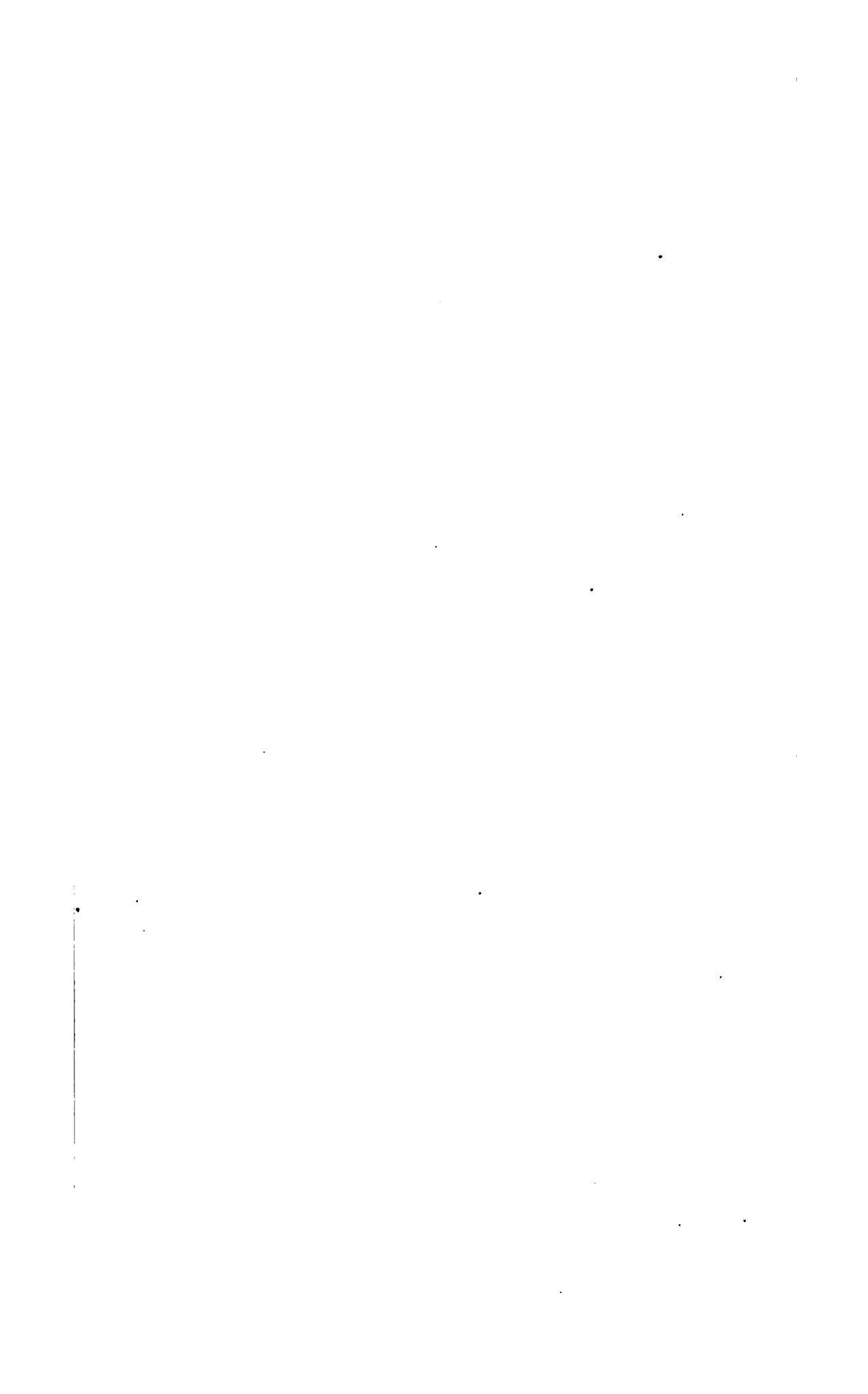
tane, nor sall take meede nor buddes of ony partie: And gif onie sick be given, or hecht: or onie prayer maid before the giving out of the declaration and determination of the assisours: the said assisoures sall openly reveal the buddes, gifts or prayers and the quantitie and manner thereof to the judge in plaine Court.<sup>14</sup>

4. *Trespassours may be accused at the Kingis instance allanerly.*

ITEM, It is ordained, that all Maires and Serjandes arriest at the Schireffis bidding, albeit that na partie follower be, all trespassoures: and that the said Schireffe follow the saids trespassoures in the Kings name, gif na partie follower appearis.<sup>15</sup>

<sup>14</sup> The latter part of this act appears in force.

<sup>15</sup> This act may be considered the foundation of the statutory obligation on the public authorities in Scotland to prosecute crimes, whether with or without the concurrence of the private party injured.



ACTA PARLIAMENTORUM  
REGIS JACOBI SECUNDI.

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APUD EDINBURGH,  
XIX DIE JANUARIJ, A.D. M.CCCC, XLIX.

6. *The byer of Landes suld keepe the tackes set before the bying.*

ITEM, It is ordained, for the safetie and favour of the puir people that labouris the ground, that they and all utheris, that hes taken, or sall take landes in time to come fra Lordes, and hes termes and zeires thereof, that suppose the Lordes sell or annaly that land or landes: the takers sall remaine with their tackes, unto the ischew of their termes, quhais handes that ever thay landes cum to, for siklike maill, as they tooke them for.<sup>16</sup>

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APUD EDINBURGHE,  
VI DIE MARTII, A.D. M.CCCC, LVII.

34. *That nane set Creilles in waters.*

ITEM, That na man in smolt time, set veschelles, creilles, weires, or ony uther ingine to let the smoltes to goe to the Sea, under the paine of ten pound to the King: And that the Schireffe of the land destroye them that are maid.<sup>17</sup>

<sup>16</sup> This act forms the great protection to tenants in Scotland against removal on the sale or alienation of the lands let to them. The terms of the act being very general, it has given rise to numerous questions at law, and disquisitions by institutional writers. Reference is especially made to Sir George Mackenzie's Observations, p. 37, *et seq.* Stair, b. ii. tit. ix. § 2, *et seq.* Erskine, b. ii. tit. vi. § 23, *et seq.* Bell on Leases, and Hunter on the Law of Landlord and Tenant, and authorities therein mentioned.

<sup>17</sup> The penalties incurred by commission of the offence mentioned in this act are now much increased.





ACTA PARLIAMENTORUM  
REGIS JACOBI TERTII.

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APUD EDINBURGH,  
XXXI DIE JANUARI, A.D. M,CCCC,LXVI.

*2. That na man of craft use merchandice.*

ITEM, It is statute and ordained that na man of craft use merchandice be himselfe, nor sail in merchandice, nouthir be himselfe, nor his factoures, nor his servandes, bot gif he have leave, and renunce his craft, but colour or dissimulation.<sup>18</sup>

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APUD EDINBURGH,  
XX DIE NOVEMBRIS, A.D. M,CCCC,LXIX.

*2. The Judge Ordinar being partial, or refusand to do Justice, sall satisfie the party, and pay an unlaw to the King.<sup>19</sup>*

*3. Landes may be redeemed be the first seller, fra the first byer, or any uther possessor.*

ITEM, As touching new inventiones and selling of landes be Charter and sais-ing, and taking againe of reversiones, and it happen the byer to sell the samin land againe to ane uther person: It is now seene expedient in this present Parliament, and according to law and conscience, that the first seller have recourse to the samin landes, sauld be him under reversion, to quhatsumever handes the saids landes cummis payand the money, and schawand the reversion, and have sik priviledge and freedome against the persones, that haldis the said landes, as he suld have against the principal first byer. And because sik reversiones may of case be tint: Our Sov- raine Lord sall make the said reversiones be registred in his register, gif it be re- quired, on their expenses: That it is to say, of ilk ane, ane halfe marke, the quhilk registred, sall have the samin force, as the principal reversion were schawed for the time.<sup>20</sup>

<sup>18</sup> This act is confirmed by 1487, ch. 13. But see the following cases, Guild Brethren of Stirling, 8th January 1697, M. 1916. Burnet, &c., 3d January 1711, M. 1919. Hog, 26th January 1743, M. 1926. Incorporated Trades of Aberdeen, 28th May 1793, M. 1979. Guildry of Stirling v. Weir, 27th November 1823, 2 S. & D. See also Bell's Principles, § 2184, *et seq.*

<sup>19</sup> In reference to this act, see note annexed to 1424, ch. 6.

<sup>20</sup> This act was modified by 1617, ch. 16, which see. See also Erskine, b. ii. tit. viii. § 9, *et seq.*

4. *Of Obligations to be followed within fourtie zeir, or else prescribe.*

ITEM, As anent Obligations, that sall be followed in time cumming, except them, that ar dependand in the Law, before the making of this act: It is advised, that the partie to quhome the Obligations is maid, that hes interest therein, sall follow the said obligation, within the space of fourtie zeires, and take document thereupon. And gif he dois not, it sall be prescribed, and be of nane availle, the said fourty zeires beand runnin, and unpersewed be the partie.<sup>21</sup>

12. *That the puir tennentes sall pay na farther then their termes maill for their Lordis debt, be the brieve of distresse.*

ITEM, Till eschewe the great heirschip and destruction of the Kingis commons, maillers, and inhabitantes of Lordis lands, throw the force of the brieve of distresse. That quhair ony summes are obtained be vertue of the saide brieve upon the Lord, awner of the grounde, that the gudes and cattel of the puir men inhabitants of the ground are taken and distrenzieid for the Lordes debtes, quhair the mailles extendis not to the availle of the debt: It is advised and ordained in this present Parliament, that fra hyne-furth the puir tennents sall not be distrenzieid for the lords debtes, further then his termes mailles extendis to. And gif the summe obtained be the brieve of distresse exceedis the termes maill, the Officer sall at the instance of the partie, that obtainis the debt, gang to ony uther proper gudes of the debtour, and pay the remanant of his debt, if he hes sa meikil within the schire.

And gif he hes not sa meikil lands or gudes within the schire, the creditour sall cum to the King, and bring certification of the said Schireffe, howe meikil he wantes of the summe recovered be the brieve of distresse, and may not get his proper gudes within the schire. And then the King sall gif his letters to ony uther Schireffes, quhair the debtour hes ony uther gudes or mailles within the Realme, and gar them be prised, and pay the said creditour within fiteene dayes after the forme of Law. And quhair the debtour hes na moveabil gudes, but his landes, the Schireffe, before quhom the said summe is recovered be the brieve of distresse, sall gar sell the land to the availle of the debt, and pay the creditour: swa that the inhabitantes of the saides landes be not hurt, nor grieved for their Lordis debtes. Nevertheless, it sall be leiffull to the person that aucht the lande, first to redeeme and quite out the samin againe within sevin zeires, payand to the byer the money that it was sauld for, and the expenses maid on the Over-Lorde for Charter, saising and infestment. And the saide redemption and lowsing to be maid within sevin zeires, as said is, or not.

And gif the creditour takis the termes maill be vertue of the brieve of distresse, it sall not be leiffull to the Lord to tak it againe.

And gif there cannot be foundin a byer to the saids landes, the Schireff of that Schire or ony uther, quhair he hes land, sall cheese of the best and worthiest of the Schire, and least suspect to ony of the parties, to the number of thretteene persons, and apprise the said landes, and assigne to his creditour to the availle of the said summe, within sex moneths after the said summe be recovered before the Schireff.

<sup>21</sup> This is the statute which introduced the negative prescription of written obligations. It was explained by 1474, ch. 9, and extended by 1617, ch. 12, which see. In Mr Thomson's edition of the Scots Acts the word *or* is inserted before the words "that hes interest therein."

And als the Over-lord sall receive the creditour or ony uther byer, tennent till him, payand to the Over-lord a zeires maill, as the land is set for the time. And failzieing thereof, that he take the said land till himselfe, and under-gang the debtes.<sup>22</sup>

18. *That the Kingis Rolles and Register be put in buikes.*

ITEM, It is thocht expedient, that the Kingis Rolles and Register be put in buikes, and have sik strength as the Rolles had of before.<sup>23</sup>

APUD EDINBURGH,

IX DIE MAII A.D. M.CCCC.LXXIV.

6. *Of ane Tutor and his age.*

ITEM, It is statute and ordained anent the briefe of Tutorie, that it be understanding in time cumming, that he that is nearest Agnat, and of twentie five zeires of age, fulfilling the lave of the poyntes of the briefe, sall be lauchfull tutour, suppose the childe that happenis to be in tutorie, have ane zounger brother or sister, Notwithstanding that the agnat is not immediat to succede to the childe, because of zounger Brother and sisters.

8. *Anent airship of moveable gudes of Barronnes.*

ITEM, Anent the airship of moveable gudes, that the aires of Baronnes, Gentle-men, and Free-holders sall have : It is statute and ordained, that the saidis aires sall have the best of ilka thing, and after the statute of the Burrow Lawes, and as is contained in the samin.<sup>24</sup>

9. *Prescription of Obligations.*

ITEM, Anentis the acte maid of before of prescription of Obligationes : It is ordained to be understandin in this wise, that all auld Obligations maid of before, that is elder then the dait of fourtie zeires, not dependant in the Law, in the time of the making of the said actes, sall be prescribed, and of na strength : and in likewise in time to cum, all Obligationes maid, or to be maid, that beis not followed within fourtie zeires, sall prescrive, and be of nane avail.<sup>25</sup>

<sup>22</sup> The first part of this act, viz. that which relates to the use of diligence at the instance of Creditors of the Landlord against his Tenants, appears to be now in desuetude. See Erskine, b. iii. tit. vi. § 22.

The second part of the act is the foundation of the old Scottish process of apprising land for debt, which is now superseded by the modern process of adjudication. See 1672, ch. 45.

The concluding enactment, which states the terms on which a superior is bound to enter an appriser, is still in force as applicable to adjudgers under the said act of 1672. See Erskine, b. ii. tit. vii. § 7 and 8.

As to this act in general, see Sir George Mackenzie's Observations, p. 70, *et seq.*

<sup>23</sup> In reference to this act, Sir George Mackenzie, in his Observations, says, that in order to understand it, "Its fit to know, that both in Parliament and Exchequer there were no registers but rolls. And by this act the rolls are ordained to be turned into books, and these books are declared to be as authentic as their originals, and the clerk is yet designed Clerk of the Council Register and Rolls."

<sup>24</sup> For a commentary on this act, see Erskine, b. iii. tit. viii. § 17, *et seq.*

<sup>25</sup> The act here referred to is 1469, ch. 4, which see, and note thereon.

10. *The Retour suld contene the auld and new extent.*

ITEM, Anent the brieves of inquest to be served in time to cum : It is statute and ordained, that it be answered in the retour, quhat the land was of availe of the auld, and the very availe that it was woorth, and gives the day of the serving of the said breve.<sup>26</sup>

13. *The Over-Lord not entrand to the superioritie, tinis the samin, and satisfies the partie.*

ITEM, It is statute and ordained anent Over-lords, that in defraud and skaith of their vassalles and tennentes, differris to enter to their landes & superiorities, that in time to cum, the saids over-lords sall enter to their lands & superiorities, & do their diligence thereto, but fraud or gile within fourtie daies, after that they be required be their vassalles or tennentes. The quhilk gif they do not, the saidis vassalles or tennentes incontinent thereafter to be entred be the King, or the Over-lorde, that the superiorities ar halden of, and hald of him, and the other Over-lorde, that fraudfully differris his entrie, to tyne the tennent for his life-time, and assith the partie of his coastes and skaithes, that sall be susteined throw him, in default of his entrie.<sup>27</sup>

15. *The unlaw of stealing of haulkes, houndes pertrickes and Dukes.*

ITEM, Anent the eschewing of great trouble, discord, and divers inconvenientes that may cum, anente the stealing of Haulkes and Houndes : It is statute and ordained, that in time cumming, na maner of persons take ane uther mans hounds, nor haulkes, maid or wilde, out of nestes, nor egges out of nestes, within ane uther mannis ground, but licence of the Lord, under the paine of ten poundes. And in likewise that na egges be tane out of the Pertrickes, nor wild-duik-nestes, under the paine of fourtie shillings. And this to be a poynt of dittay in time to cum.<sup>28</sup>

16. *Of Daes and Raes, hunting of Deares, and taking of Cunninges.*

ITEM, That na man slaie Daes nor Raes, nor Deare in time of storme, or snaw, or slaie onie of their Kiddes, quhil they be ane zeir auld, under the paine of x. pundis : And it to be a point of dittay. And in likewise that na man hunte, schutte, nor slaie Deare nor Raes in utheris closes or Parkes, or take out Cunninges out of uthers Cunninaires, or ony foules of utheris Dowcattes, or fish out of utheris puiles or stanckes, but special licence of the awners, under the paine of dittay, and to be punished as thief.<sup>29</sup>

<sup>26</sup> For an explanation of this statute, and of the manner in which the old and new extents are proved, see Stair, b. iii. tit. v. § 38. Erskine, b. ii. tit. v. § 29, *et seq.* Juridical Styles, vol. i. p. 382, *et seq.*

<sup>27</sup> This act is the authority for the special charge and summons of declarator of tinsel of superiority now in use. See Erskine, b. iii. tit. viii, § 80, and Juridical Styles, vol. iii. p. 182.

<sup>28</sup> In reference to this act, see Hume on Crimes, vol. i. p. 82.

<sup>29</sup> In reference to this act, which was ratified by 1535, ch. 10, see Hume on Crimes, vol. i. p. 82.

## APUD EDINBURGH,

XX DIE NOVEMBRIS A.D. M,CCCC,LXXV.

4. *Anent false assisors in criminal causes. Of ane great assise.*

ITEM, As touching the reformation of false assise, passand upon criminal actions before our Sovereine Lordis Justice, Schireffes, or uther Officers: It is statute and ordained, conforme to the Kings Lawes, *De pœna temerè jurantium super assisam*, That quhair indited persons are schawin before the assise, in the accusation of a trespassour, notour, or manifest knowledge beand of the trespassour, & it hap- pin the persons that passis on the assise, wilfully be favours or partial meanes, to acquite the trespassour, or trespassoures, in that case it sall be lieffull to the King and his Councel to call the assise, & inquire at them, gif they concord all in a voyce, or how mony said all in a voyce, and how mony said ane uther way. And they that ar suspect *De temerario juramento*, sall be accused before the King & his Justice, quhat day & place, that it pleasis his hienesse. And gif thay persones pleasis to graunt their fault and *temerarium perjurium*, to be punished therefore, after the forme of the aulde lawe. And gif they deny or makis excusation thereof be igno- rance, the King or his Councel sall give them ane great assise of xxv. Noble per- sones, and schaw to that assise the evidents or notour knowledge of the trespasse, in sa far as was schawen to the first assise. And thereafter gif it beis foundin that the first assise acquit the trespassours be temerarie, or wilfully be favoures or partialitie: Sa mony as beis convict of that cryme, to be punished after the forme of the auld lawes, contained in the buik of *Regiam Majestatem*. Neverthesse the persones that happenis to be accused of the trespasse, outhier to be convict, or maid quite, after the forme of the first deliverance, and the false assise to be punished, as said is.<sup>30</sup>

8. *Anent the brieve of Idiotrie and furiositie.*

ITEM, It is statute & ordained, that sen there is a brieve of our Sovereain Lordis Chapel maid and ordained for the safetie of alienation of Lordes and Bar- ronnes landes, throw idiotes and natural fules, furious and wood-men the time of their folly, the quhilkis brieves savis not the alienation, bot allanerly fra the time of the serving of the saidis brieves, and remeids it not, that is done of before, in case it be done in the time of the folly or furiositie, albeit he be als great a fule and furious before, as after: It is statute and ordained therefore in time to cum, the said brieve be reformed, & an clause put theirin, to inquire of the folly & furi- ositie, and how lang time he was of thay conditions. And fra it be knowin be the inquest, that the persones be fules or furious, the time thereof, the alienation maid be him, after the time that the inquest findis that he was outhier fule or furious, sall be of nane availe, bot retreated, and brocht againe till him, alsweil as the alienation maid after the serving of the said brieve.<sup>31</sup>

<sup>30</sup> In reference to this act, which may now be considered obsolete, see Sir George Mac- kenzie's *Observations*, p. 80. Sir George considered the act "in observance" in his time. See also Hume on *Crimes*, vol. i. p. 413, *et seq.* See also this act as printed in Mr Thom- son's edition of the *Scots Acts*, vol. ii. p. 111, in which several words differ from the above.

<sup>31</sup> In reference to this act, see Erskine, b. i. tit. vii. § 48, *et seq.*, and *Juridical Styles*, vol. i. p. 426, *et seq.*

## APUD EDINBURGH,

I DIE JUNII, A.D. M.CCCC.LXXVIII.

6. *Anent Cruves.*

ITEM, It is statute & ordained, that the acte maid of before, be King *James* the First, anent cruves set in waters, be observed & keiped. The quhilk beiris in effect, that all cruves set in waters, quhair the Sea fillis & ebbis, destroyis the Frye of all fisches, be put away & destroyed for ever mair: notwithstanding ony fredome or priviledge given in the contrair, under the pain of five pund of ilk cruve: And that they that hes cruves in fresh waters, that they gar keip the lawes anent *Satterdaies* slop, & suffer them not to stand in forbidden time, under the samin paine. And that ilk heck of the said cruves be three inch wide, as the auld statute requiris, maid be King *David*, & that the mid streme be left free be the space of sex fute. And that it sall be a poynt of dittay, baith of them that dois the contrair, or garris be done: & quha that beis convict thereof, to pay 5. pund, as said is.<sup>32</sup>

11. *Of schoing of horse in the quick be smiths.*

ITEM, Because ignorant Smithes throw ignorance or drunkennesse spillis and cruikis mennis Horse, schoing in the quick: It is statute and ordained, that quhen ever a Smith schois a mannis Horse in the quick, that Smith sall make and pay the coast of the horse, quhill he be haill, and in the meane time finde the man ane Horse to ryde upon, and do his labour, quhill the said horse be haill. And gif the said horse cruikis throw the said schoing, and will not haill, the smith sall hald the said horse himselfe, and pay the price of the horse to the man that awe him.<sup>33</sup>

## APUD EDINBURGH,

XVIII DIE MARTII, A.D. M.CCCC.LXXXI.

14. *Ane woman conjunct fear makand faith that scho sall never cum against the Alienation theireof, sall nocht be hearde afterwarde to impugne the said Alienation.*

*Memorandum*, The sext day of *March*, the zeir of God, 1481 zeires, *Robert Danielstoun* was persewed be a woman called *Glen*, before the Lordes of Council, and scho wald have cummin against her aith, that scho maid in judgement before the Official of *Glasgow*, and there was schawin ane Instrument under the seale of the said Official, that scho consented to the alienation of sik landes, and swore that scho suld never cum in the contrair hereof, and wauld have the saidis landes, alleageand

<sup>32</sup> The first part of this act is in force. The 9th George IV. ch. 39, § 7, augments the penalty of L.5 Scots to any sum between L.5 Sterling and L.20 Sterling, at the discretion of the Judge. See Note affixed to 1424, ch. 12, which is the act here made perpetual.

The part of this act which relates to the mid-stream is in desuetude. See *Stair*, b. ii. tit. iii. § 70, and *Barclay v. Scott*, 18th March 1684, M. 14,286.

<sup>33</sup> This statute proceeds on the general principle of law now in operation, which fixes responsibility on persons undertaking any employment, either mechanical or professional.

that it was her conjunct-fetment, and maid revocation after her husbandis decease, sayand that he compelled her thereto. The action was delivered against this woman.<sup>34</sup>

## APUD EDINBURGH,

I DIE OCTOBRIS, A.D. M,CCCC,LXXXVII.

### 6. *Of the keeping of arreisted trespassours.*

ITEM, It is thought expedient, statute and ordained, for the punition & justifeing of sik trespassours as hes bene in times by-gane, after that they were taken and arreisted be the Crowners, and in default that they could finde na borrowes, nor there was na Castel to receive and keepe them in, quhill the Justice Aire, and their-throw escaiped and was put fra the Law: That therefore in time to cum, quhair onie Crouner arreistis and takis sik trespassours, he sall bring them to the Schireffe of the Schire, quhilk Schireffe sall receive them, and keepe them in suretie and firmance on OUR SOVERAINE LORDIS expenses quhair it failzie of their awin gudes, quhill the nixt Justice Aire, and then presente them to the Justice. The quhilk Schireffe sall have allowed to him in the Checker, for the expenses, that he makis in the keeping of thay persones, that beis delivered to him be the Crouner, for ilk person three pennies on the day, he bringand a testimonial to the Checker fra the justice under his seale, of the persones, that he bringis to the justice aire, & how lang time, and quhat dayes he keiped them. Upon the quhilk time and daies the justice sall take certification & prooffe in the aire, quhat time the Crouner delivered them, & how lang the Schireffe keiped them. And gif the Schireffe refusis to receive the persone or persones that sall be brocht to him be the Crouner, as said is, he sall underly the danger and unlaw of the Justice aire to the fourt court, as ane borgh suld do, for fault of entrie of a person arreisted, the Crouner prievand, that he brocht sik persones to the Schireffe, and required him to receive them, as said is.<sup>35</sup>

### 13. *That Craftes-men usand merchandice renunce their Craft.*

ITEM, It is statute and ordained, that the acte of Parliament, touching the Craftes-men usand and dealand with merchandice, micht be put to execution, sa that he that is a Craftes-man, outhir for-beare his merchandice, or else renunce his Craft, but ony dissimulation or cullour, under the paine of escheit of the merchandice, that he usis occupyand his Craft, and this escheit to be in-brocht be the said searchores to our Soverain Lordis use, and compt thereof to be maid in the Checker.<sup>36</sup>

### 17. *That Commissares of Burrowes compeir togidder anis in the zeir in Innerkething.*

ITEM, It is statute and ordained be the hail three Estaites, that zeirly in time to cum, certaine Commissares of all Burrowes, baith South and North, conveene

<sup>34</sup> This act establishes the law respecting the effect of ratifications executed by married women. See Erskine, b. i. tit. vi. § 33, *et seq.*

<sup>35</sup> In reference to this act, see Commissioners of Supply of Wigtonshire v. Officers of State, 5th June 1827, 5 S. & D.

<sup>36</sup> See note annexed to 1466, ch. 2, which is here confirmed.



and gadder togidder anis ilk zeir in the Burgh of *Innerkething*, on the morne after Saint *James* day, with full commission : and there to commoun and treate upon the weil-fare of merchandice, the gude rule and statutes for the commoun profite of Burrowes. And to provide for remeid upon the skaith and injuries susteined within the Burrowes. And quhat Burgh that compeiris not the said daie be their Commissares to paye to the coastes of the Commissares five pound. And zeirly to have our Soveraine Lordis Letter to destreinzie herefore, and for the inbringing of the samin.<sup>37</sup>

<sup>37</sup> This act is the original authority for the convention of royal burghs, but various changes respecting the time of meeting, and other matters have been made by subsequent statutes See 1578, ch. 11, and 1581, ch. 26.

ACTA PARLIAMENTORUM  
REGIS JACOBI QUARTI.

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APUD EDINBURGH,

VI DIE OCTOBRIS, A.D. M,CCCC,LXXXVIII.<sup>38</sup>

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APUD EDINBURGH,

III DIE FEBRUARII, A.D. M,CCCC,LXXXIX.

16. *Anent cruves and fishzaires : Of the mid-streame : The Setterdaies slop : Creilles and nettes : Read fish.*

ITEM, Anent cruves & fishzaires, quhilkis destroyis the fry of fish, and hurtis the commoun profite of the Realme : It is ordained, that the actes and statutes maid of befor, be observed and keiped with this addition : That letters be written to all Schireffes, Baillies and Stewardes, to destroy, cast-downe, and put away all the cruves within their bounds incontinent without delay. And that dittay be tane upon them, that hes cruves in the contrair the said acte. And to pay for ilk cruve five pound for amerciament in the Justice aire, to be raised on the maker & upholder of the samin. And in likewise the Schireffe that failzies, to be jif amerciament of twentie pound to the King in the Justice aire, and to be a poynt of dittay, as said is. And anent the cruves that standis in freshe waters, that they stand not in forbidden time. And let the mid-streame be alway free, be the space of five fute. And that the *Satterdaies* slop be observed and keiped, as the Acte and statute maid be King *David* requiris. And that ilk heck of the said cruves be five inche wide, according to the samin statute. And as for millers, that settis creilles & nettes in dammes, milne-landes, and waters, destroyand read fish, and fry of fish, as said is, sall be a poynt of dittay. And the paine baith of causer of creilles, nettes, and of the millers, ilk ane of them that dois in the contrair, to incur the unlaw of read fish, and to be taken of them that dois in the contrair. And that letters be written, as said is, to the Schireffes, Stewardes, and Baillies, to put this act to exe-

<sup>38</sup> The following act appears in Mr Thomson's edition of the Scots Acts, and in the edition of 1566, but not in the editions of 1597 and 1681.

" XVI. *Of Cruffis and fisch dammys.*

" ITEM, It is statut and ordand that all Cruffis and fisch dammys that ar within salt waters quhar the sey ebbis and flowis be alutly distroyit and put done als wele thai belongis to our Sovereaine lord as utheris throu all the realme. And as anent the Cruffis in fresch waters that thai be maid of sic langines and sic dayis kepit as is contenit in the acts and statuttis maid thar uppoun of befor."

This act is ratified by 1563, ch. 3, which see.

cution, & see that the samin be observed and keiped, under the paine of twentie pound, to be raised upon the officiares that failzie, as said is. And as touching the slauchter of read fish, that it be punished after the forme of the statute, declair-and the unlaw thereof, ten pound.<sup>39</sup>

## APUD EDINBURGH,

XXVIII DIE APRILIS, A.D. M,CCCC,XCI.

### 6. *The Wardatar sall not destroy the Landes : he suld susteine the minor.*

ITEM, It is statute and ordained, that quhair onie Land or landes happenis to fall in Waird to our Soverain Lord, or onie uther Barronne of this Realme, Spiritual or Temporal, or landes given in conjunct-festment, or life-rent alsweill to Burgh as to land, that the Schireffe of the Schire or Baillies sall tak sik-like sovertie of the person or persones, that gettis or hes sik wairdes, that they sall not waist nor destroy their bigginges, Orchards, wooddes, stanks, parks, medowes, or dowcats, bot that they hald them in sik-like kinde, as they are in the time, that he gettis and receivis the samin, he takand his reasonabil sustentation or using in neidful thinges without destruction or waisting thereof. And ane reasonabil living to be given to the sustentation of he air, after the quantitie of the heritage, gif the said air hes na blanche ferme, nor few-ferme land to susteine him on, alsweil of the waird lands, that fallis in our Soveraine Lordis hands, as onie uther Barronne Spiritual, or Temporal.<sup>40</sup>

### 7. *Of landes falland in waird or utherwaies altered, that the tennentes sall remaine theirwith, quhill the nixt Whit-sondaie.*

ITEM, It is statute and ordained, that quhen onie lands fallis in waird or quhen onie Ladie havand terce or conjunct-festment, happenis to deceis, or quhat land be redeemed or lowsed be reversion, gift, selling, or wedsetting, or onie uther-waies landes happenis to be altered. The tennentes, labourers, and inhabitantes onie of the said landes sall remaine unput foorth, or remooved, quhill the nixt terme of *Whit-sunday* followand, payand to the Lord, that sall enter to the said landes the malles, and dewties aucht and wont of the said landes, quhilk bruiking sall induce na possession langer, then the said *Whit-sunday*.<sup>41</sup>

<sup>39</sup> See latter part of note annexed to 1424, ch. 12. See also Erskine, b. ii. tit. vi. § 15.

<sup>40</sup> In reference to this act, which was ratified by 1535, ch. 14, and the extension of it, see Erskine, b. ii. tit. ix. § 62, *et seq.* Bell's Principles, § 1065, and authorities there referred to; and Bell and Halliday v. Bell, 7th December 1827, 5 S. & D.

The caution referred to in the first part of the act is not, by modern usage, required, unless some reasonable cause be shewn to fear waste or neglect on the part of the liferenter. See Bell's Principles, § 1064.

<sup>41</sup> In reference to this act, see Erskine, b. ii. tit. vi. § 49, and Bell's Principles, § 1270, and authorities referred to.

## APUD EDINBURGH,

VIII DIE MAII, A.D. M,CCCC,XCIII.

22. *That aires may revoke at their lauchful age, and of our Sovereine Lordis revocation.*

ITEM, Sen it is leaved and permitted be the constitutions & ordinances of lawes Civil and Canon, that persons constitute in zouthed and tender age, quhilks ar greatly damneged & skaithed in their heritages, be imprudent alienations, donations, venditions, and permutacions of the samin, may at their perfection of age make revocation, and reduction of thinges done prejudicial to them in their minorities and tender age.<sup>42</sup> Here follows "The Kingis Revocation,"<sup>43</sup>

## APUD EDINBURGH,

XIII DIE JUNII, A.D. M,CCCC,XCVI.

6. *That all summoundes of errour be raised and persewed within the space of three zeires.*

ITEM, It is statute and ordained, that all summoundes of errour, or inordinate Proces, that ar to be raised be ony persones, that thinkis them hurte be the determination of inquestes, or be proces of Schireffes led in the serving of Brieves in time to cum, be raised and persewed within the space of three zeires, after the saide proces, and making of retoures: The parties that alleagis them hurte, being of lauchful age, and within the Realme: Swa that the erreure and in-ordinate processe, michte cum to their eares: And gif onie persones omittis to raise sik summoundes, and persewis them not within the said termes. The said termes being paste, they sall never be heard in judgement upon that action thereafter: Bot sall tane their priviledge of reduction of the said Proces and errour, for all time to cum: Neverthelesse the summoundes, that ar now dependand and hingand betuixt ony parties, to be proceeded, as they were wont: And quhair that ony persones thinkis them hurte, be retoures or proces, that ar else led and maid in time by-gane: That they raise summoundes thereupon, within the space of three zeires, and persew the samin. And failzieing thereof, that they be never heard in judgement, as said is, bot to tane their priviledge of reduction, in all times to cum.<sup>44</sup>

## APUD EDINBURGH,

XI DIE MARTII, A.D. M,D,III.

9. *Summoundes upon recent spuilzie, may be execute upon fifteene daies.*

ITEM, Anent recent spuilzie, It is statute and ordained, that it sall be leiffull to the partie quhilke is spuilzied, to summonde the spuilziers upon fifteene daies before the Lordes, sa that he make his summoundes within fifteene daies, nixt after the committing of the said spuilzie, notwithstanding the act maid of before,

<sup>42</sup> The preamble of this act is referred to as the statutory authority for the competency of revocations by minors.

<sup>43</sup> This act is modified and explained by 1617, ch. 13, which see. See also in elucidation, Erskine, b. iii. tit. vii. § 19.

that all summoundes suld be maid upon twentie ane daies : And richtswa, to have power to call the said spuilzier before the Schireffe, and that there sall be na exception dilator admitted against that summoundes, it beand lauchfully indorsate.<sup>44</sup>

13. *Anent stealers of Pykes, breakers of zairds and dowcattes.*

ITEM, Anent steallers of Pykes out of stancks, breakers of Dowcattes, Orchards or zairds, or stealers of hives, and destroyers thereof: And als anent them, that slayis Parked Deare, Raes, or Rae-buckes, of Lordes' proper wooddes, that that be a poynt of dittay in time to cum. And that the unlaw thereof, be ten pound, togidder with ane amendis to the partie, according to the skaith. And gif any Children within age, commit ony of thir thinges foresaid, because they may not be punished for none-age, their Fathers or maisters sall pay for ilk ane of them, ilk time committing ony of the said trespasses foresaid, threttene shillings four pennies, or else deliver the said Child to the Judge, to be leisched, scourged, and dung, according to the fault.<sup>45</sup>

21. *The heretoures and aires may be followed at the zeiris end, after the decease of their fore-bears: Caution suld be found be the executors, to the aire.*

ITEM, Anent the exceptions proponed be heretoures, quhen they ar persewed for debtes of their Fathers, or fore-bears, to quhome they succede, allegand that their Fathers moveable gudes suld pay their debtes, and that the executors suld be called before them: It is advised, statute, and ordained, that it sall be leiffull to the creditour to follow the aire, after the by-passing of ane zeir. Because the executors suld be responsal for ane zeir: at the end of the quhilk, he suld give his compt. And gif it pleasis the aire, he may, and suld be diligent, and require the Ordinar within the said zeir, to aske compt, and he to see the compt, and quhat beis foundin remanent, over the things perteanand to their office, that he suld require the Ordinar, that he nicht have caution and sovertie for the relieving of his heretage, in sa far as the gudes restis attour the compt. And that the Ordinar sall cause him to have sufficient caution thereof. And sa at the end of the zeir, the aire sall answeir to everilk creditour.<sup>46</sup>

<sup>44</sup> This act appears to be the statutory authority for so much of the Act of Sederunt of 21st (or 29th) June 1672, as classes summonses of recent spulzie raised within fifteen days after the committing of the deed, with privileged summonses, the *induciae* of which are, by the 6th George IV. ch. 120, § 53, made six days.

This act also appears to be the authority for the jurisdiction of sheriffs in questions of spulzie, and as the ordinary *induciae* of all summonses before the sheriff are, by A.S. 12th November 1825, declared to be six days, it would appear that summonses of recent spulzie in the Sheriff Court stand upon the same footing in this respect as other summonses.

<sup>45</sup> In reference to this act, see Hume on Crimes, vol. i. p. 82.

<sup>46</sup> By our present usage, in contradiction to this statute, the heir may be sued for moveable debts immediately after the ancestor's death, if by his own conduct in any way he has lost the benefit of the *annus deliberandi*; and thus, though he be only debtor *subsidiarie* for the moveable debts of his ancestor, he is less favoured by the law than the executor who cannot, since A.S. 28th February 1662 was passed, be obliged to pay any of the executry debts sooner than six months after the debtor's death.

The present act gives the heir a right of relief against the executor for any moveable debts of the ancestor paid by the heir. See Erskine, b. iii. tit. ix. § 48.

22. *Anent the exceptions proponed anent Widowes, in hindring of them of their teirces.*

ITEM, It is statute and ordained, anent the exceptions proponed against Widowes, persewand and followand their brieves of teirce, or the profite of their teirce, quhilk is oftymes proponed against thay widowes, that they were not lauchful wives to the persones their husbandes, be quhome they follw their said teirce : That therefore, quhair the matrimonie was not accused in their life-times, and that the woman askand this teirce, beand repute and halden, as his lauchful wife in his life time, sall be teirced, and bruik her teirce, but ony impediment or exceptions to be proponed against her, ay and quhil it be clearly decerned, & sentence given, that scho was not his lauchful wife, and that scho suld not have ane lauchful teirce therefore.<sup>47</sup>

24. *That all our Sovraine Lordis lieges be ruled be his lawes.*

ITEM, It is statute and ordained, that all our Sovraine Lordis lieges beand under his obeysance, and in special the *Illes*, be ruled be our Sovraine Lordis awn Lawes, and the commoun lawes of the Realme, and be nane uther Lawes.

37. *That it sall be laifful to everie man, baith Spiritual and Temporal, to set their landes in few.*

ITEM, It is statute and ordained, because the Kingis Hienesse is of will and minde, for policie of his Realme, to set his proper landes, baith annexed, and unannexed, in few-ferme : Therefore, he hes granted to all his Estaites, with their advise, that ever-ilk Lord, Barronne, Frie-halder quhat-sum-ever, Spiritual or Temporal, sall have power induring the daies of his life, to set all their landes in few-ferme, or annual rente, to ony person or persones : Swa that it be not in diminution of their rental, swa that the alienation swa maid of the maist part of all their lands, sall be na cause of fore-faltour, nouthir to the setter, nor to the taker notwithstanding, ony statute or lawes maid in the contrair.<sup>48</sup>

39. *That the inhabitants of annexed and unite landes to uther Barronages sall answeire to the Justice aires, Schireffe courtes, quhair the landes lyeis.*

ITEM, Because it hes bene ane defrauding in execution of Justice, that quhair lands hes bene annexed & unite in ane Barronnie, quhilks lands lyeis in sindrie Schireffedoms, throw the quhilk the inhabitants of the saidis lands sa annexed, hes never answered in Schireffe court, nor Justice aire, in the Schireffedome, in the quhilk they lye, because the Lordship, that they were annexed to, lyeis in ane uther Schireffedome : Therefore it is statute and ordained in time to cum, that ever-ilk Barronnie, and the inhabitantes thereof, sall answeire in Schireffe courtes, and Justice aire, quhair the said Barronnie lyeis, and there be halden to compeir, baith be arreis of his Schireffe Officiar and Crowner, notwithstanding the said annexations : And the annexation sall suffice allanerly for the Lord, that hes the said landes annexed, to give their presence, and service in the place, quhair they ar ordained be the said annexation.

<sup>47</sup> In reference to this act, see Erskine, b. ii. tit. ix. § 50.

<sup>48</sup> This act, although a temporary one, introduced the power of fubfening land, which now exists without limitation, unless expressly prohibited by the proprietor's title-deeds.

40. *Of exceptions to be proponed against the brieve of inquest : Summoundes of assisors : Proclamation of brieves.*

ITEM, It is statute and ordained, that because there hes bene in time by-gane, great abusion in the proponing of exceptions frivol, against the brieve of inquest, and perverted the ordoure and nature of it, as it were ane brieve of pley : There fore for the eschewing of sik frivol exceptions in time to-cum : It is statute and ordained, that na exception avails against the said brieve of inquest, it beand cryed openly upon fiftene daies, with the indorsing of the Officiar that cryed it, containand twa witnesses, and his seale or signet, bot the exceptions followand allanerly : That is to say, against the judge, against the inquest, and the exceptions of bastardrie, and that to be proponed in the forme of the auld Law : And as anent the exception maid anent the summounding of inquest, upon fiftene daies before, after the forme of the statute of King *Robert*, quhilks maks mention, that the inquest suld be summound upon fiftene daies before : It sall be leifful notwithstanding the said statute to the Schireffe, or any uther Officiar, that is Judge to the brieve of inquest, to summound the said inquest upon quhat daies he pleasis, or upon schort time, notwithstanding the saide statute : And gif they be present in the Tol-buith un-summounded, sa that there be nane uther lauchful exception against them, it sall be leifful to the Schireffe or Officiars, to compel them to passe upon the said inquest. And attour, because there hes bene ane abusion in the crying of the Kingis brieves in Stewartries and Baillieries, quhair they were cryed at ane Hil, na confluence of people being there, throw the quhilk na knowlege their of micht cum to the partie : Herefore it is statute and ordained, that all maner of brieves of inquest, sall be cryed at the mercat croce of the burgh openly in plaine mercat, quhen maist confluence of people is gaddered. Swa that the crying thereof, may cum to the knowlege of the partie defender, quhair it suld be served, and quhat day. And that the said brieve be thrise cryed plainely togidder, and betuixt ilk crying the space of all the three cryinges. And that all Officiars of the Towne be warned to compeir at the said proclamation to beare witnes : And gif it sall happen, that the Antecessor of ony clamand richt, decease sa neare the terme of *Whit-sunday* and *Martin-mes*, that the persewer may not get it upon ane mercat day, for nearenes of the terme of *Whit-sunday* or *Martin-mes*, in that case, it sall be leifful to him to gar cry his brieve upon ony oulke day : Swa that he have the Officiars of the Towne, and part of the honest persones to the number of sex persones, saifand to our Sovereine Lord, his warning upon fourtie daies, after auld use and consuetude.<sup>49</sup>

45. *That na Schireffe nor Officiar distreinzie, or poynd ony thing belangand to the pleuch, in time of teilling.*

ITEM, It is statute and ordained, that in time to-cum, na maner of Schireffe nor Officiar poynd nor distreinzie, the oxen, horse, nor uther gudes pertaining to the pleuch, and that labouris the ground, the time of the labouring of the samin, quhair ony uther gudes or lande ar to be apprised or poynded, according to the common law.<sup>50</sup>

<sup>49</sup> In reference to this act, see Erskine b. iii. tit. viii. § 59, *et seq.*, and Juridical Styles, vol. i. p. 374, *et seq.*

<sup>50</sup> By modern practice plough-goods may be poynded where the debtor has no other moveables. See *Turner v. Scott*, 7th December 1692, Fount. vol. i. p. 528, *et M.* 10,523. In further elucidation, see Erskine b. iii. tit. vi. § 22.

ACTA PARLIAMENTORUM  
REGIS JACOBI QUINTI.

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APUD EDINBURGH,  
XIII DIE MAII, A.D. M,D,XXXII.

*2. The institution of the College of Justice.*

ITEM, Anent the second artickle, concerning the ordour of Justice, Because our Sovereine Lord is maist desirous to have ane permanent ordour of Justice, for the universal weill of all his Lieges : And therefore tendis to institute ane College of cunning and wise men, baith of Spiritual and Temporal Estate, for doing & administration of justice in all civil actions : And therefore thinkis to be chosen certaine persones maist convenient, and qualified therefore, to the number of fourteene persones, halfe Spiritual, halfe Temporal, with ane President : The quhilkis persons sall be authorized in this present Parliament to sit and decide upon all actions civil, and nane uthers to have vote with them, unto the time the said College may be institute at mair leasure.

*The place quhair to sit in, and of the feriat times.*

AND Thir persones to beginne and sit in *Edinburgh*, on the morne after *Trinitie* Sunday, quhill *Lamb-mes* : And thereafter to have vacance, quhill the nineteene day of *October* nixt after, and then to begin and sit quhill *Saint Thomas* Even afore *Zule*, and thereafter to begin on the morne after *Epiphanie* day, and sit quhill *Palme-Sunday* Even, and thereafter to beginne upon the morne after *Dominica* in *Albis*, and sit quhill *Lamb-mes*.

*The Lordis to be sworne.*

AND thir persones to be sworne to minister justice equallie to all persones, in sik causes as sall happen to cum before them, with sik uther Rules and statutes, as sall please the Kingis Grace to make, and give to them, for ordouring of the samin.

*The authorizing in Parliament.*

THE Three Estaites of this present Parliament, thinkis this artickle weill conceived : And therefore the Kingis Grace, with advise and consent of the saidis three Estaites, ordainis the samin to have effect in all poyntes, and now ratifies and confirmis the same, and hes chosen thir persones underwritten, to the effect foresaid, quhais processe, sentences and decreetes, sall have the samin strength, force and effect, as the decreetes of the Lordes of Session had, in all times hy-gane.



*The authoritie of the Chancellor and Lordes.*

Providing alwaies, that the Lorde Chancellor being present in this Towne, or ony uther place, he sall have vote, & be principal of the said Councel. And sik-like uther Lordes, as sall please the Kingis grace to injoyne to them of his greate Councel, to have vote sik-like, to the number of three or foure.

*The names of the Lordes.*

THAT Is to say, the Abbot of *Cambuskenneth* President, Maister *Richard Both-well*, Schir *John Ding-well*, Maister *Henrie Quhite*, Maister *Robert Schanwel*, Vicar of *Kirkcaldie*, Maister *William Gibsone*, Maister *Thomas Hay*, Maister *Arthur Boyce*, The Lairde of *Balwerie*, Schir *John Campe-bel*, Maister *Adame Otterburne*, *James Colvil*, of *East Weemes*, the Justice Clerke, Maister *Frances Bothwel*, Maister *James Lawson*. And thir Lordes to subscribe all deliverances, and nane uthers, after they begin to sit, and minister Justice.<sup>51</sup>

## APUD EDINBURGH,

VII DIE JUNII, A.D. M.D,XXXV.

11. *For breakers of dowcattes, cunninggaires, parkes and stanches.*

ITEM, It is statute and ordained, that all they that breakis dowcattes, Cunnin-gaires, Parkes, stanches, and takis or stealis foorth of the samin, Daes, Raes, Cunn-inges, Dowes, Pykes, fish, Hives and Bees, without special licence of the awner thereof, sall be called and punished therefore, as for theft at particular diettes : And this acte to extend to them that ar airt, part, or gives assistance to sik mis-doers.<sup>52</sup>

14. *The life-renters, and the Wardaters, suld finde caution to the proprietares and minors.*

ITEM, Because it is un-profitable and inutile, to make lawes and statutes for policie to be had, without the same be keiped : And because sik ordour and provision, as is devised for policie, may failzie be falling of landes in warde, or giving of the samin in conjunct-fee or life-rente : Therefore the Kingis Grace, with advise of his three Estaites, ordainis the acte maid thereupon, be the maist excellent Prince, King *James* the Fourth, his Father of maist noble mind, to be observed and keiped in all poyntes, ratifies and apprievis the samin. And that all Schi-reffes, Stewardes, Baillies, and uther officiares, baith in Regalitie and Royaltie, and siklike Spiritual men within their landes, & to Burgh, put the samin to execution in all poyntes : That is to say, All Officiares within the Royaltie, and Lordes of Regalities, under the paine, of refounding to the heritours of sik landes fallen in warde, at their perfite age, of all damage and skaith, that they sall happen to susteine throw their negligence (they being required thereto be the persones, that is in warde or his friends.) And if the wardatours, Ladies of conjunct-fee, or life renter of sik landes, refusis to finde sovertie conforme to the said act (they being required thereto) be the Schireffe, Baillie, Stewart, Provest, or Alder-

<sup>51</sup> The present Court of Session was instituted by this act.

<sup>52</sup> In reference to this act, see Hume on Crimes, vol. i. p. 82.

man in Burgh, That the said Schireffe and Officiares, ilk man within his awin boundes, charge them to finde the said sovertie, conforme to the said acte personally, or be open proclamation at the head burgh of the Schire, quhair the saids landes lyes, within twentie ane daies, nixt after they be charged thereto, under the paine of wanting of the profite of all sik warde landes, conjunct-fee, and life-rentes, to be in brocht to the Kingis use, ay and quhill the said caution be sufficientlie foundin. And that the Lordes Auditoures of the Checker, and Thesaurer for the time, inquire diligently in everie Checker, that all Schireffes and uthers Officiares foresaid, at the making of their compts, gif the said caution be sufficientlie foundin, and get certification thereof.<sup>53</sup>

38. *The life-rent of all vassales, being zeir and day at the horne, perteinis to the immediate Superiour.*

THE quhilk day in the mater referred be Lordes of Session to the Lordes three Estaites of Parliament, for interpretation of certaine Lawes of the Realme, schawin and produced before the saidis Lordes of Session, in ane action mooved before them, and zit dependand be *James Kennedie of Blairquhan*, against *Thomas Makcledlane of Gylestoun*, for the mailles and dewties of the landes of *Castel-cruik* and *Killimanoch*, with the pertinents, lyand within the Schireffedome of *Wigtoun*, perteinand to the said *Thomas* in heritage, halden of the said *James* immediatlie in chiefe, and throw his being at the horne attour zeir and day : The mailles and dewties of the saids lands, be the Lawes of the Realme, perteinis, and suld perteine to the said *James*, for the said *Thomas* life-time. And because the saidis Lawes were variant in their selves, and therefore were referred to the interpretation of the Estaites of Parliament, gif the samin concernis simple slauchter or not, and suld have place in that mater or not, as at mair length is conteined in the acte maid here-upon, of the dait at *Edinburgh*, the fourth day of *March*, the zeir of God, ane thousand, five hundreth, threttie foure zeires : Baith the saidis parties being personallie present with their Procuratoures & Fore-speakers, the saidis Lawes and uthers their reasones and allegations being heard, seene, & understandin the Lords of artikles being ripelie advised therewith : finds that the use in times by-gane, hes bene, that the mailles and dewties of the landes of them that hes bene zeir and day at the horne, halden of uther Superiours then the Kingis Grace, zeir and day being by-paste, returned againe to the superiours of the saidis landes, for the life-time of them that susteined sik proces of horning zeir and day, as said is : except crimes of treason, and lese-majestie. And findis that the saidis Lawes suld be sa interpreted and used in times cumming.<sup>54</sup>

<sup>53</sup> The act here ratified is 1491, ch. 6, which see and note annexed thereto.

<sup>54</sup> By the 20th of Geo. II. c. 50, escheat upon denunciation for civil causes is entirely abolished ; but this act is still in force to the effect of creating a liferent escheat in favour of the superior in the following cases, viz. 1. In the case of sentence of death followed by escape, the judgment terminating the vassal's capacity to hold the feu, and the existence of the vassal excluding his natural heir. 2. In the case of a vassal being denounced a rebel for a criminal cause, and remaining unrelaxed for a year subsequent to the denunciation. In reference to this subject, see Erskine, b. ii. t. v. §. 66. In criminal cases denunciations may be used against persons cited to the Court of Justiciary, either *first*, if they appear there with a greater number of followers than is permitted by statute ; or, *secondly*, if, by failing to appear, they are declared fugitives from the law. See Erskine, b. ii. t. v. §. 57.

## APUD EDINBURGH,

III DIE DECEMBRIS, A.D. M.D.XL.

10. *The ordour of sumounding of all persones in Civil actiones.*

ITEM, For eschewing of greate inconvenientes and fraude, done to OUR SOVERAINE LORDIS Lieges, be sumounding of them at their dwelling places, and oft-times falslie, and gettis never knowledge thereof: IT IS statute and ordained, that in times cumming, quhair ony Officiar or Schireffe in that parte, passis at commande of the Kingis letters, or the Schireffes, Stewardes, Barronnes, or Baillies precept, to summounde onie partie, gif they cannot apprehende them personallie, they sall pass to the zett or dure of the principal dwelling place, quhair the person to be summounde dwellis, and hes their actual residence for the time, and there sall desire to have entresse, quhilk gif it be granted, they sall first schaw the cause of their cumming: And gif they cannot get the partie personallie, they sall schaw their letters or precept before the servandes of the house, or uther famous witsnesse, and sall execute their offices and charge, and thereafter sall offer the copie of the saidis letters or precept to ony of the servands, quhilk gif they refuse to do, that they affix the samin upon the zett or dure, of the persones sum-mound: And sik-like gif they get na entresse, they first knockand at the dure sex knockes, they sall execute their office before famous witsnesse, at the said house and dwelling place, and affixe the copy upon the zett or dure thereof, as said is, quhilk sall be leifful and sufficient sumounding and delivering of the copie, and the partie, nor Officiar sall not be halden to give ony uther copie, but at their awin pleasure. And everie officiar in his indorsation, sall make mention of his awin execution, in maner foressaid. And the partie at quhais instance, the letter or precept is direct, sall pay to the Officiar executour the expenses of the copie affixed, as said is: And sall be taxed and given againe to him, at the giving of the decret or sentence, gif he happenis to obtaine: And gif the Officiar beis foundin culpable in the execution of his office, he sall be put in our Sovereine Lordis prison, and punished in his person and gudes, at the Kingis Grace will.<sup>55</sup>

12. *Saisinges upon precepts of the Chancellarie, suld be given be the Schireffe Clerke, and all uthers be honest Notars.*

ITEM, It is statute and ordained, for eschewing of inconvenients of giving of saisinges be private Notars, quhais names ar oft-times un-knawin, and their protocoles cannot be gotten, in-case the principal instrument be tinte, destroyed, substracted, and halden awaie. For eschewing hereof: THAT All saisinges be given in times cumming, be the Schireffe Clerke, or his deputes, whom-fore he sall answer, and be nane uthers, upon all precepts that passis be the Chancellarie: And all uthers saisinges to be given be famous Notars admitted thereto, and be nane uthers.<sup>56</sup>

15. *Of false Notars and witsnesse, Counsellors, and users of falsed.*

ITEM, For punishment of false Notares, and them that bearis false witsnesse, or that inducis ony man to beare false witsnesse: And sik-like of them that makis

<sup>55</sup> In reference to this act, see Mr Tait's Treatise on the Law of Evidence, p. 11, *et seq.* and authorities there referred to.

<sup>56</sup> This act was explained by 1606, ch. 14, which see. See also Erskine, b. ii. t. iii. § 37.

false instrumentes, or causis make ony false instrumentes, or usis the samin wittinglie : That all sik persones in times cumming, be punished in their persones and gudes with all rigour, sik-like as it is provided be the disposition of the common Law, baith, Canon, Civil, and statutes of the Realme.<sup>57</sup>

APUD EDINBURGH,  
XIV DIE MARTII. A.D. M.D.XL.

10. *Ratification of the institution of the College of Justice.*

THE Kingis Grace, with advise of his three Estaites of Parliament, understand ing that the institution of his College of Justice, and acts maid thereupon, ar richt profitable to his Grace, and all the haill Realme : And therefore now after his perfite age of twentie five zeires, hes ratified and apprieved, ratifies and apprievis, for him and his Successoures, the institution of the saide College of Justice, and actes maid for administration of Justice therein : And likewise ratifies and apprievis the confirmation, ratification, approbation of the *Paipe*, of the erection of the said College, and of the gift of all benefices, rentes, given and to be given, assigned, and to be assigned, to the honest sustentation of the said College of Justice : And all privileges, quhat-sum-ever, graunted, and to be graunted thereto, bee the *Paipe*, and his hienesse : And wils, and ordainis for the causes foresaid, that the said College and institution thereof, remaine perpetuallie, for the administration of Justice, to all the lieges of this Realme, and to be honoured sik-like, as ony uther College of Justice in uther Realmes. And attour, gives and grantis to the President, Vice-president, and Senatoures power to make sik actes, statutes, and ordinances, as they sall thinke expedient, for ordouring of proces, and haistie expedition of Justice : And in absence of President and Vice-president, wils, that the eldest in ordour of the saidis Senatoures, be President for the time, to the effecte, that there may be na stop of Justice ony time, throw absence of the said President, and Vice-president.<sup>58</sup>

22. *The paines of Judges that dois wrang : And of them quha slanders them wrangeously.*

SWA It is statute and ordained, that for-sa-meikle as it hes bene heavilie murmured to our Sovereine Lorde, that his Lieges hes bene greatlie hurte in times by-gane be judges, baith Spiritual and Temporal, quha hes not beene allanerlie judges, bot plaine sollistares, partial Counselloures, assisters and partakers with sum of the parties, and hes tane great geare and profite.

Therefore it is statute and ordained in times cumming, that all Justice. Schirreffes, Lordes of Session, Baillies of Regalities, Provost and Baillies of Burrowes, and uther deputes, and all uther judges, Spiritual and Temporal, alsweill within Regalities as Royaltie, sal do trew and equal Justice to all our Sovereine Lordis Lieges, without ony partial Counsel, rewardes, or buddes taking, further then is

<sup>57</sup> In reference to this act, see Hume, vol. i. p. 158, *et seq.*

<sup>58</sup> This act is most important, as it not only ratifies the institution of the College of Justice, but also confers on the Judges the power of making those rules of Court or Acts of Seuerunt which thence derive their authority as law.

The privileges belonging to the College of Justice, and which are confirmed in this act, are specified in A. S. 23d February 1687.

permitted of the Law, under the paine of tinsel of their honour, fame, and dignitie, gif they be tainted and convicted of the samin : And gif ony maner of person murmuris ony judge, Temporal or Spiritual, alsweill Lordes of Session, as uthers, and proovis not the samin sufficientlie, hee sall be punished in semblable maner and sorte, as the saide judge or person quhom he murmuris, and sall pay ane paine arbitral, at the will of the Kings Grace, or his Councel, for the infaming of sik persones : Providing alwaies, gif ony Spiritual man failzie, that he be called before his judge Ordinar.<sup>59</sup>

*23. Provision and paines of them committand fraude in alienation or uther waies.*

ITEM, For eschewing of inconvenientes, that oft and diverse times happenis in this Realme, of the new invented crafte and falsed committed and done dailie be them that sellis their landes, or disponis the samin, *ex titulo oneroso*, that puttis their Bairnes or uther friend, and person in the state of the samin, before the daite of the selling or giving thereof to uthers, as said is : Herefore it is statute and ordained, that quha sellis and disponis ony landes or annualrentes to ony maner of person, for ony cause, quhair warrandice may fall and puttis uthers in private stato thereof, not be resignation in the Kingis Grace handes, nor be confirmation with precept, past furth of the Chancellarie, nor be plaine resignation in the Over-lordes handes, or confirmation of the Over-lord, and the person that happenis to get thir landes, and bruikes the samin peaceablie, zeir and daye, be labouring, manuring, and uptaking of the mailles, profitis, & dewties, & swa kenned heretable possessor thereof, zeir and daye : The person or persones havand private state and saining of the saidis landes, sall never be heard, to claime the samin, against the seconde heretable possessor, for ony cause, bot to persew his interest against the principal giver, and his aires : And the person seller or giver, to be called and declared infamous, at the Kingis Grace instance, & to be punished in his person and gudes, at the Kingis Grace will and pleasure. And gif the Over-lordes receivis double resignationes wittandlie, to the effect abone written, they too bee punished sik-like : And this Acte to be extended to them, that makis double assedationes, and double assignationes.<sup>60</sup>

*24. The creditour may persew him quha is charged to enter within fourtie daies, and enters nocht.*

AND Anent the remeid to be put to the fraude daillie committed be heretoures of them that ar dead, and ar awand great summes of money, to sindrie persones their creditoures, and the saidis aires fraudfullie lyis foorth, and will not enter to their landes, swa that they may be distreinzieid for the saidis debtes, in case they be not distreinzieable in uthers moveable gudes : Therefore it is statute and ordained, that letters sall be direct be deliverance of the Lordes of Councel, and at the instance of ony compleiner, to commande and charge the saidis heretoures (they beand of perfite age) to enter to their landes, zeir and daye being paste, after the decease of their Father, or predecessoures, quhom to they succede, to enter to the samin, within fourtie daies, nixt after their charge : And failzieing thereof,

<sup>59</sup> This act may be considered still substantially in force.

<sup>60</sup> The priority and preference of heritable rights are now regulated by subsequent statutes, but it may be doubted whether this statute might not be founded on as a warrant for awarding punishment against the granters of double rights, and any superiors accessory thereto. See Ross's Lectures, vol. ii. p. 284.

letters sall be direct to the Schireffe of the Schire and his deputes, to apprise the saidis landes to the saidis creditoures, for the saidis debtes (gif they be liquide.) The quhilk processe of apprising, sall have als greate strength, force, and effect, as the saidis aires were entred thereto, and the saidis apprised landes to be halde of the immediate superiour thereof: Providing alwaies, that it sall be leasum to the saidis heritoures, and their successoures, to redeeme the saidis landes, within seven zeires, conforme to the acte of Parliament maid there-upon of before, and after the tenoure thereof in all poyntes.<sup>61</sup>

### 30. *Anentis conduction of Craftes-men.*

ITEM, Because it is heavelie murmured, that all Craftes-men of this Realme, and specially within Burrowes, usis sik extorsion upon uthers our Soveraine Lordis Lieges, be reason of their craftes and privie actes and constitutiones, maid amangest themselves, contrair the commoun weill, and in great hurte, prejudice, damage and skaith to all the Lieges of this Realme: Therefore it is statute and ordained, that in all times cumming, it sall be leasum to all our Soveraine Lordis lieges, that hes ony bigginges or reparationes to be maid, for the making of policie in this Realme, outhir to Burgh or to Lande, to chuse gude Craftes-men, free-men, or uthers, as he thinkis maist expedient, for ordouring, bigging, and ending of all sik warkes. And gif ony Craftes-men beginnis the said warke, and delayis to end the samin, that the person that causis to big the said warke, or reparation foressaide may chuse and take uthers in their places, als oft as neede beis, to furnish and ende forth the saide warke, for policie of the Realme: And that na impediment be maid to sik Craftes-men, usand their craft, as saide is, be ony uther of the saide craft within this Realme, under the paine of tinsel of their freedome, and breaking of the actes of Parliament: And that the Provost and Baillies of all Burrowes, take inquisition hereupon, and put this acte to execution in all poyntes.<sup>62</sup>

### 37. *That na faith be given to evidentes sealed, without subscription of the principal or Notar.*

ALSWA It is statute and ordained, that because mennis seales may of adventure be tint, quhair-throw great hurt may be genered to them that awe the samin: And that mennis seales may be feinzied, or put to writings, after their decease, in hurte and prejudice of our Soverain Lords lieges: That therefore na faith be given in time cumming, to ony obligation, band, or uther writing under ane seale, without

<sup>61</sup> By modern practice charges may be directed against heirs before they arrive at perfect age, provided their tutors and curators be cited edictally, and the process of adjudication has superseded the old diligence of apprising. For a commentary on this act, which is partially explained by 54th Geo. III. c. 137, § 8, see Erskine, b. ii. tit. xii. § 11, *et seq.* It is extended to the debts of the heirs themselves by 1621, c. 27. See also Juridical Styles, vol. iii. p. 328.

<sup>62</sup> In reference to this act, which is ratified and confirmed by 1607, c. 8, Sir George Mackenzie in his Observations (p. 146) remarks, 'Though the meaning of this act seems to be, that where tradesmen, who are freemen, either desert their work, or delay the same, the owner of the work may choose other freemen, or complain to the deacon: yet it was found in July 1675, by the Council, in the case of *Borlands* against the *Masons of Edinburgh*, that where a freeman either deserted or delayed, the owner of the work might employ any, even unfreemen, though it was alleged, it was not just to punish all the freemen for the fault of one. Nor was it convenient for the commonwealth that unfreemen should be admitted, for whose work none can be answerable.'

the subscription of him that awe the samin, and witenesse: or else gif the partie cannot write, with the subscription of ane Notar thereto.<sup>63</sup>

38. *Anentis burning of Cornes, raising of fire, and ravishing of weemen.*

ITEM, It is statute and ordained, that the committers of the crimes of fire-raising, & ravishing of weemen, be put under sovertie to the Law, like as the crimes of slauchter and mutilation: And in-case of none-finding of sovertie, to denunce them rebelles, like as men slayers. And als because the burning of Cornes in barne zairdes, is sa greate offense against the commoun weill: That therefore there be never respect nor remission given in time to-cum, to ony persones that burnis cornes in stacks or barnes, bot the committers thereof, to be justified to the death, or else banished the Realme for ever.<sup>64</sup>

40. *The nearest of the Kin, to have the gudes of minors, that dies intestat, without prejudice of the Quote.*

ITEM, Anent the artickle proponed: For-sameikle as oft-times zounge persones dies, that may not make testamentes, the Ordinares usis to give their executoures Datives to their gudes, quhilkis intrumettis therewith, and withdrawis the gudes fra the Kin and friendes, that suld have the samin be the Law: It is statute and ordained, bee the three Estaites of this present Parliament, that quhair ony sik person dies within age, that may not make their testamentes, the nearest of their Kin to succede to them, sall have their gudes, without prejudice to the Ordinares-anent the Quote of their testamentes.<sup>65</sup>

45. *Of them that counterfaictis the Kingis money.*

ITEM, For-sameikle as diverse wicked, evil advised persones, feinzies and counterfaictis our Soveraine Lordis money, quhilk may returne to the greate damage of this Realme, without remeid bee provided therefore in time: Therefore it is statute and ordained, that all Provestes, Aldermen, Baillies, and Officiars of Burrowes, search and seeke upon all mercat daies, & uther times necessar, all persones that can be apprehended, havand false money, or counterfaictis the Kingis irons for cuinzie: And bring or send them to our Soveraine Lordis Justice, to be justified for their demerites, after the forme of the Lawes of the Realme, maid upon false cuinzieoures.

<sup>63</sup> This is the first statute relating to the subscription of Deeds, a matter which is now regulated by 1681, c. 5, which see, and note thereon. See also Erskine b. iii. tit. ii. § 7. By 1579, c. 18, where the party cannot write, two Notaries are required to subscribe for him before four famous witnesses.

<sup>64</sup> Mr Hume, vol. i. p. 125, 126, refers to this act, to shew certain cases of fire-raising which subject the offenders to capital punishment.

<sup>65</sup> The quot was abolished by 1700, c. 15, and also by 4th Geo. IV. c. 97, § 1.

ACTA PARLIAMENTORUM  
MARIÆ REGINÆ.

APUD EDINBURGH,  
I DIE FEBRUARII, A.D. M.D.LI.

11. *Anent them that maries twa wives or husbandes.*

ITEM, It is statute and ordained, that quhat-sum-ever person maries twa sindrie wives, or women maries twa sindrie husbandes, livand togidder un-divorced lauchfullie, contrair the aith and promise maid at the solemnization and contracting of the matrimonie, and swa ar of the Law perjured & infamous: Therefore, that the paines of perjuring be execute upon them with all rigour: That is to say, confiscation of all their gudes moveable, warding of their persones for zeir and day, and langer in-during the Queenis will, and as infamous persons, never able to bruik office, honour, dignitie, nor benefice in time to-cum.<sup>66</sup>

12. *Anent Adulterers.*

ITEM, Anent persones that ar married, & ar open, manifest, commoun and incorrigible adulterers, and will not desist and cease therefra, for feare of ony Spiritual jurisdiction, or Censures of halie Kirk, to the greate perrel of their awin saules: Therefore it is statute and ordained, in this present Parliamente, that all sik incorrigibil adulterers, after that the processe of halie Kirk, sa far as the samin may extend to, be used upon them for their inobedience and contemption, be denounced our Sovereaine Ladies rebelles, and put to the horne, and all their moveable &c. And swa na appellation interponed fra the said Censures of halie Kirk, to suspend the horning.<sup>67</sup>

17. *The paine of false Notars, users of falsed.*

ITEM, It is statute and ordained be the Lord Governour, with advise of the three Estaites of Parliament, that the actes and statutes maid of before, against false Notars and witnesse, corrupters and seduceres of them in writ, Temporal or Spiritual courtes, to bee observed and keiped in all poyntes, and ratifies and apprievis the samin of new, with this addition: That all sik persones sall be punished in their persones and gudes with all rigour: *Videlicet*, prescription, banishing and dis-membring of hande or tounge, and uthers paines, provided be the disposition of

<sup>66</sup> In reference to this act, see Hume, vol. i. p. 459, *et seq.*

<sup>67</sup> This act was confirmed and the crime made capital by 1563, c. 10. See Hume, vol. i. p. 454.



the common Law, baith Cannon, Civil, and statutes of the Realme. And this acte to be extended to all maner of evidentes, actes, obligations, acquittances, or uthers writings quhat-somever, and the makers, feinziers, users, seducers, corrupters, and falsars thereof, alsweill as to false instrumentes.<sup>68</sup>

### APUD EDINBURGH,

XX DIE JUNII, A.D. M.D.LV.

#### 3. *Anent warning fra redeemed landes, and the paine for none-removing.*

ITEM, In likewise it is statute and ordained, that gif ony persones havand richt be reversion to redeeme lands, or uther possessions, makis, or causis make lauchful warning to all parties, fra quhom the saids lands or uther possessiones aucht and sulde be redeemed, to compeir at ane certaine day, in the place named in the said reversion, for receiving of the summes of money and tackes, gif ony be specified therein, and at the day warned, fulfilling all thinges, as accordis, conforme to the reversion for his parte, gif the parties warned, as said is, compeiris, and refusis to graunt the saidis landes or possessiones lauchfullie redeemed, or absents themselves, gif there be na tackes to run, after the redemption of the landes or possessiones, or the tackes being run out, the haver of the richt to the reversion, causand lauchful warning to be maid to the parties foresaidis, and all uthers occupars, before ony *Whitsunday* terme, after the redemption, to flit and remove fra the saidis landes and possessiones, the redemption in maner abone specified, being foundin lauchful, and the landes be vertew thereof, decerned lauchfullie redeemed: In that case the parties quha suld have granted the redemption of the saidis landes refused and absented, sall be called as violent possessours thereof, fra the terme of *Whitsunday*, before the quhilk lauchful warning was maid to remove, as said is, sik-like as the lands and possessiones had been granted lauchfullie redeemed the day of the redemption.<sup>69</sup>

#### 4. *Ane man-slayer may be relaxed upon caution, to ane certane day: And being thereafter denounced Rebel, the daies of Relaxation, ar esteemed dayes of rebellion.*

ITEM, It is statute and ordained, that gif ony person or persones slayis ane uther, the person being charged to find soverty within sex daies, and findis not the samin, or sovertie being foundin, compeiris not at the day, and swa he be put to the horne, and ony time thereafter within zeir and day, he offerris of new to underly the Law, and to finde sovertie thereupon the paines sall be double sovertie being foundin, and hee relaxed. And gif he compeiris not at that day, and of new beis denounced rebel, his relaxation maid and given, be vertue of the last sovertie foundin, sall na-waies helpe him anent the tinsel of the life-rent of his landes, bot he sall tine the samin, as he had not bene relaxed fra the first horning: And this to be extended to all relaxationes maid within zeir and daye, after the first horning, and to airt and pairt of the slauchter, with the paines ay doubled: And attour, all alienationes, contracts, obligations, and uther thinges quhatsoever, that sall be

<sup>68</sup> The punishment of dismemberment of hand or tongue has been discontinued. See Hume, vol. i. p. 137, *et seq.*

<sup>69</sup> In reference to the subject of this act, see Erskine, b. ii. t. viii. § 16, *et seq.*, and Ross's Lectures, vol. ii. p. 367, *et seq.*

done be him, to be null and of nane availle in the selfe, without ony processe of reduction, during the time of his relaxation upon his soverties, foundin after the first horning : Swa that hee compeir not at the day, and enter to the quhilk he findis soverties : sik-like as and he had annalied, contracted, oblised, or done uther thinges, beand Rebel, and at the horne. And this act to be extended in the favoures of uthers superiours, alsweil as unto the Queenis Grace. And gif it happenis ony person or persones, committers of slaughters, for none-finding of soverties, or sovertie being foundin, for none-compeirance, beis denounced Rebelles, and put to the horne, and thereafter passis to Girth, and offers to finde sovertie to abide the Lawe, for the fore-thocht-fellony : In that case sovertie being foundin, and they compeir and at the day, and acquite of the fore-thocht fellony, to be restored againe to the Girth, and the act foresaide to have na place against them, bot upon the second horning.<sup>70</sup>

6. *The ordour for summoning of parties to compeir before the Justice, or uthers Judges.*

ITEM, It is statute and ordained, that ony person summond to compeare before the Justice, his deputes, or uthers judges within this Realme, havand power of Justiciarie in criminal causes : The copie of the saidis letters or precept, quhair-by-hee is summond, sall be delivered to him, gif he can be personallie apprehended, and failzieing thereof, sall be delivered to his wife or servanda, or affixed upon the zet of his dwelling place, gif he ony hes, and thereafter open proclamation being maid at the head Burgh of the Schire, ane uther copie to be affixed upon the mercat croce, Providing alwayes, that gif there be maa persons nor twa contained in the letter, being all called upon ane deede and crime : In that case, twa copies to be delivered to twa of the principal named in the saidis letters, or then given to their wives or servandes, or affixed upon their zettes or dwelling places, gif they ony have, and ane copie left & affixed upon the mercat croce, quhair the publication is maid, to be sufficient to the hail persones, quhat-sum-ever they bee contained in the saidis letters.<sup>71</sup>

7. *Anent giving of saisinges upon precepts of Chancellerie.*

ITEM, For-sa-meikle, as in umquhile our Soveraine Lordis time, that last deceased, It was statute and ordained, that all saisinges quhilkis passis upon precepts of the Chancellerie, to be given be the Schireffe Clerke, or his deputes : Sen the quhilk acte, there is be occasion of weir and great troubles, diverse saisinges given be uthers Notars, upon precepts past forth of the said Chancellerie : Therefore the three Estaites of Parliamente, dispensis with that fault of all saisinges, given be uthers Notars, sen the making of the foresaid acte, and ordainis the said acte to be published, and have effect in time cumming, with this addition : That upon all precepts past forth of the Chancellerie, the Schireffe, Steward or Baillie, alsweil the Regalitie, as Royaltie, or their deputes, sall be required to passe to give saising with the Schireffe Clerke and his Deputes : And gif the Steward, Baillie, or their deputes refusis to passe and give saising, then the partie haver of that

<sup>70</sup> Sir George Mackenzie in his *Observations*, p. 154, says, "Though this act runs only against committers of slaughter, yet it holds in all criminal causes."

<sup>71</sup> The first part of this act is in force. See Hume, vol. ii. p. 243, *et seq.*

Indictments are now served on every pannel, and not merely on the two principal pannels, when there are more than two persons accused.

precept to put ony uther Baillie to give saising, as he sall think maist expedient.<sup>72</sup>

8. *Anent the ordour for giving of curatoures to Minors.*

ITEM, Because it is understandin, that be the giving of curatoures to Minores bee sindrie Judges, there hes bene great skaith susteined be the saidis Minores: Therefore it is statute and ordained, that in all times cumming, quhen onie Minor passis the zeires of his Tutorie, and desiris Curatoures: That he cum before his judge Ordinar, and desire of him ane summonds or edict, to warne twa, at the least, of the maist honest and famous of the Minor's kin, and all uthers havand interesse, quhilk sall be warned lauchfullie: That is to say, the special persones personallie, or at their dwelling places, givand ane copie to their wives or servandes, or affixand it on their zettes or dures, and uthers havand interesse generallie at the mercat croce of the head Burgh of the Schire, quhair the saidis Minores hes their landes or gudes, to compeir at ane certaine daye, upon nine dayes warning at the least, to heare and see the Curatoures desired be the said Minor, to be given to him unto his perfite age of twentie ane zeires, and caution foundin, *de fideli administratione*, quhilkis beand given in maner foressaid, they sall not be revoked nor discharged, nor uthers chosen to the Minor, unto the time they be called before the Lordes of Councel, or uthers judges Ordinar, at the will of the bairne, to heare and see them discharged, and revoked for reasonable causes: Quhilkis being foundin of veritie, they then to be discharged, and uthers curatoures given in their places be the ordour foressaid, with caution, and na uther-wise.<sup>73</sup>

11. *The procuratorie and instrument of resignation suld be sealed and subscribed.*

ITEM, It is statute and ordained, that all resignationes to be maid be vassalles in time to cum, of their properties in the Superiours hands, *ad perpetuam remanentiam*, beand maid be procuratorie, the said procuratorie sall be sealed and subscribed be the vassalles handes: And gif hee cannot write, to be subscribed with his hande at the pen, led be ane authentick Notar, and sealed, as said is. And gif the said resignation beis maid be the vassal personallie, *ad perpetuam remanentiam*, that the instrument thereof bee sealed with the seale of the resignar, and subscribed with his hand: And gif he cannot write, to be subscribed with his hand at the pen, led be ane Notar in maner foressaid, and na resignation *ad perpetuam remanentiam*, to have faith in time to cum, utherwaies then is abone specified.<sup>74</sup>

12. *Anent the warning of tennentes.*

ITEM, It is statute and ordained, that in all times cumming, the warning of all tennentes and uthers, to flit & remove fra lands, milnes, fishinges and posses-

<sup>72</sup> In reference to this act, see 1606, ch. 14, and 1540, ch. 12, herein referred to. See also Erskine, b. ii. tit. iii. § 37.

<sup>73</sup> It was decided in the case of Wallace, 29th July 1674, M. 16,290, that it behoves two of the next of kin to be cited on the father's side, and two on the mother's. See Erskine, b. i. tit. vii. § 11.

<sup>74</sup> Procuratories of Resignation *ad remanentiam* must now be executed in the same manner, and with the same formalities as dispositions of heritage; but this act is still the rule for requiring, that where resignation is made *propriis manibus* of the resigner without any procuratory, the instrument of resignation *ad remanentiam* must be signed by him as well as the notary. See Erskine, b. ii. tit. vii. § 20.

siones quhat-sum-ever, sall be used in maner following: That is to say, lauchful warning being maid ony time within the zeir, fourtie dayes before the feast of *Whitunday*, outhir personally or at their dwelling places, and at the ground of the landes, and ane copie delivered to the wife or servandes, and failzieing thereof, to be affixed upon the zettes or dures of the dwelling places of the saidis landes, gif onie be, and thereafter the samin precept of warning to bee red in the Paroch Kirk, quhair the landes lyis, upon ane Sabbath daye before noone, the time of Preaching or Prayers: And ane copie left and affixed upon the maist patent dure of the Kirk, fourtie dayes before the terme, and na furdre laying fouth of stresses, and remooveing upon *Wednesday*, to be used in time to cum. And gif the partie warned, in maner foresaid, removis not at the terme, in that case, the warner sall incontinent, or sa soone as pleasis him, cum to the Lordes of Councel, or to the Schireffe of the Schire, or uthers Judges, Ordinares, havand jurisdiction, schaw-and his precept of warning, ordourlie execute and indorsate, and sall have letters or precept to charge the parties warned and possessoures of that ground, to compeir before the saidis Lordes, Schireffes or their deputes, or uthers judges Ordinares foresaidis, havand Jurisdiction, upon sex dayes warning, or langer, at the will and desire of the persewar, to heare and see them decerned to remoove, desist and cease, conforme to the precept of warning and execution thereof, or else to schaw ane reasonable cause, quhy they suld not do the samin, with certification to them and they failzie, that letters sall be direct *simpliciter* upon them in the said mater: At the quhilk day, gif they compeir not, the Lordes, Schireffes, or uther Judges Ordinar havand jurisdiction, sall decerne them to remove, desist and cease fra the landes: And gif they compeir and instantlie schawis sufficient title to bruike the landes: In that case, the samin judge to proceede and do Justice, as accordis of the Lawe: And gif the partie compeiris and schawis na thing, bot makis allégeance, and offers him to improve the indorsation: In that case he sall not be heard in judgement, bot gif he finde sufficient caution to the warner then instantlie, that gif his allégeance being foundin relevant, be not sufficientlie verified and proven be him, that the profites, damage, and interest, quhilkis the said warner or ony uthers havand interest, hes susteined, or sall happen to susteine, be the delay of the foresaide allégeance, be refounded to him: And to the effect that this ordour may have sufficient processe in all times to-cum; It is devised, statute and ordained, that all Schireffes, and uthers judges Ordinar, havand jurisdiction, as said is, be their selves, or their sufficient deputes, bee reddie to sit be fensed courtes, all the lauchfull fiteene dayes after immediatlie the feast of *Trinitie Sunday*, for doing of Justice in the saidis causes, in maner abone specified: And gif the Schireffes or judges Ordinares, havand jurisdiction in maner foresaid, and their deputes failzies, to be reddie in granting of precepts, and doing of Justice for observing of this ordour: In that case, they sall pay to the partie their hail damage, interesse and expenses, but prejudice of the action, against the violent occupyars and possessoures foresaidis.

*Advocation of causes.*—AND Als, that na Advocation of causes be taken be the Lords fra the judge Ordinar, except it be for deadlie feede, or the Schireffe principal, or the judge Ordinar be partie, or the causes of the Lords of Councel, and their Advocates, Scribes and members.<sup>75</sup>

<sup>75</sup> This act, so far as it respects removings, is almost totally superseded in practice by the form of process in removings, established by A. S. 14th December 1756. With respect to the last enactment contained in this act, Sir George Mackenzie, in his Observations re-

15. *In criminal causes the persewer sall have foure friendes, and the defender see allanerlie.*

ITEM, It is statute and ordained, that gif ony person or persones being called to underlie the Law before the Justice, his deputies, or uther havand power to sit in criminal actiones, compeirand at the day, they ar called, quhat number that ever they bee of, being all called on ane crime: They sall have allanerlie with them at the barre, sex of their maist honest, wise, substantious friendes, able to give Councel with their Advocattes to defend: And the partie persewer of that crime, to have with them foure of their friendes allanerlie: Swa that be multitude of friends cummand to the barre, the getting of ane assise sall not be stopped: And the breakers of this act, to be punished in this maner: That is to say, the Justice, or uther judges foresaidis, to charge the breakers to enter their persones in waird, under the paine of rebellion, and putting of them to the horne, and gif they disobey, to put them to the horne: And gif they obey and enters in warde, there to remaine during the Queenis Grace will.<sup>76</sup>

16. *Anentis nullities.*

ITEM, It is statute and ordained, that all nullities be received and have processe, be way of exceptiones or replyis, and all titles, contractes, infestmentes, or uther thinges quhatsumever, that ar null of the Lawe, to be declared in time cumming null, and of nane availe, be exception or reply in that same instance, they ar produced: Providing alwayes, that the partie against quhom the said exceptiones or reply of nullitie is proponed, have sik-like day to call his warrand before the answering thereto, as he nicht or suld have had, in-case he had bene called be way of action, to have heard his title, contract, infestment, or uther thing produced be him, declared null of the Law.<sup>77</sup>

18. *Notars suld be examined and admitted be the Lordes of Session, and their protocolles suld be marked.*

ITEM, The Queenis Grace Dowager, and Regent of this Realme, and the three Estaites of Parliament of the samin, considdering the great and mony falsettes daylie done within this Realme be Notars, and that our Soveraine Lord, King *James* the Fifth, and in likewise our Soveraine Ladie, in her Parliament, halden at *Edinburgh*, the first daye of Februar, the zeir of God, ane thousand, five hundredre, fiftie ane zeires, maid actes for ordouring of Notars, and punishment of falsars, quhilkis as zit hes tane na dew and effectual execution: Therefore it is statute and ordained, that all Notars within this Realme, baith Spiritual and Temporal, be caused to cum be their Ordinares, Schireffes, Stewards and Baillies re-

marks, that "though the reasons of advocation here expressed seem to hold only in actions of removing, because they are annexed to this act, yet they hold generally in all advocations." This part of the act is now superseded by 50th George III. ch. 112, § 36, which specifies the various grounds for advocations of interlocutory sentences of inferior judges. The privilege of declinature belonging to members of the College of Justice is now taken away, *first*, in cases in the small debt courts, under 6th Geo. IV. ch. 48, and 1st Vict. ch. 41; and, *secondly*, in removings, brought in the Sheriff Court by summary complaint, under the authority of 1st and 2d Vict. ch. 119. In Mr Thomson's edition of the Scots Acts the word "Sunday" is inserted in place of "Sabbath," and the words "hie messe" for "Preaching or Prayers," as above.

<sup>76</sup> This act is ratified by 1564, ch. 17.

<sup>77</sup> The old form of calling warrands here referred to is in desuetude. In reference to the subject of this act in other respects, see Darling, vol. ii. p. 366, *et seq.*

*spective*, to the Burgh of *Edinburgh*, there to compeir personallie before the Lordes of Councel, or that the saidis Lordes direct their letters, requiring and charging all Notars within this Realme, to compeir before them, as saide is, bringing with them their creationes and haill protocolles, betuixt this and the Feast of *Whitsunday*, nixt to cum, at sik dayes as sall be appoynted and assigned be the saidis Lordes, to be examined, and their creationes visied be them, their protocolles produced to be marked be the saidis Lordes, and the leafes numbred, and the blancks marked, and the said protocol buiks not to be seene nor red, bot to be marked, in presence of the said Notar, and delivered againe to him but ony inspection: And as they be foundin qualified and admitted be the saidis Lordes of Councel, to use the office of Notarie thereafter: And that na Notar, be quhat-sum-ever power he be creat, use the office of Notarie within this Realme in time cumming, bot gif he first present himselfe to the saidis Lordes, schawand his creation, and be admitted be them, as qualified thereto: And that na Notars that sall happen to be discharged be the saidis Lordes, or not admitted be them hereafter, use the office of Notarie, under the paine after specified. And attour, it is ordained, that all Notars to bee admitted, as saide is, givand instrumentes, and requirand witsnesse thereto, they sall require the saidis witsnesse quhair they dwell, or take some uther evident taikin of them, and insert the samin in their saidis instrumentes, that the witsnesse may bee knawin, being present at that time. Furder, gif onie Notars beis convict of falsed, and not admitted be the Lordes, in maner foresaid, and use the office of Notarie, they sall be punished as followis: That is to saye, their haill moveable gudes to be escheit, and applyed to our Sovereine Ladies use, and thay to want their richt hande, and to be banished the Realme for ever: And further, they sall be punished to the tinsel of their life *inclusive*, as the qualitie of the cause requiris, bee sight and discretion of the judge: And the causers of thay falsettes to be done to receive the samin punishment in their persones and gudes. And because in the acte maid be our Sovereine Ladie, in her Parliament foresaid, all Notars were suspended fra the last day of March thereafter, unto the time of their admission, be the Lordes foresaidis, it being considered, that the said acte tooke not as zit dew execution: Therefore the Queenis Grace Regent, with the advise of the three Estaites, dispensis and supplies ony fault be that part of the said act, in all instrumentes given sensine, and all instrumentes to be given unto the feast of *Whitsunday* nixt to cum foresaid<sup>78</sup>.

## 22. *Anent punishment of false witsnesse.*

ITEM, It is statute and ordained, quhair ony witsnesse deponis falselie, or ony manner of persone or personnes inducis them to beare false witsnesse, that all sik persones in times cumming, be punished be pearsing of their tounge, and escheiting of all their gudes to our Sovereine Ladies use, and declared never to be able to bruik honour, office, or dignitie fra thine foorth, and furder punishment to bee maid in their persones, at the sight and discretion of the Lordes, according to the qualitie of the fault.<sup>79</sup>

<sup>78</sup> This act is superseded by 1587, ch. 29, so far as it relates to the admission of notaries.

It remains in force as to the necessity of the notary requiring the designations and places of residence of those who attest his instruments. As to the penalties of *falsed*, see Hume, vol. i. p. 159.

<sup>79</sup> In reference to this act, see Hume, vol. i. p. 377, *et seq.* By modern practice the piercing of the tongue is not resorted to as a punishment.

27. *Anentis the commoun passage in Burrowes.*

ITEM, It is statute and ordained be the Queenis Grace Dowager, and Regent, with the advise of the three Estaites of Parliament, that all commoun Hie-gates, that free Burrowes hes bene in use of preceedant, outhur for passage fra their Burgh, or cumming thereto, and in special, all commoun Hie-gates, fra drie Burrowes, to the portes and Havens nixt adjacent, or proceedant to them, be observed and keiped, and that nane make them impediment, or stop there-intil: And gif onie dois, to be called and accused for oppression, and punished therefore, according to the lawes.<sup>80</sup>

36. *Anentis stealing of Halkes, Howndes, Pertrickes, Dukes, and slauchter of Daes, Raes, Hunting of Deare, taking of Cunnings and fowles.*

ITEM, It is statute and ordained be the Queenis Grace, with advise of the three Estaites of Parliamente, that the Actes maid bee King *James* the Thrid and Fifth, anentis the stealing of Halkes, Howndes, Pertrickes, Dukes, and slauchter of Daes, Raes, hunting of Deare, taking of Cunnings & fowls, be of new published, & the same be put to dew execution, & the breakers therof to be punished conforme to the pains contained there-intil: And this acte to be extended alsweill upon the steallers of Bee-hives, fruit-trees, peillars of barkes of trees within Wooddes, and the fowlers lyand at wait with their nettes, as to the slayers of Daes, and Raes foresaidis: And the samin paines to bee execute upon them with all rigour accordingly.<sup>81</sup>

## APUD EDINBURGH,

XIV DIE DECEMBRIS, A.D. M.D.LVII.

4. *Anent the finding of caution in maters of improbation.*

ITEM, Because oft and diverse times, parties ar differred and post-poned of obtaining their intentes and sentences in their just actiones, be opponing of falsettes and improbations, quhair throw processes ar prolonged, to the great hurte of the saidis parties: It is therefore thocht expedient, statute & ordained be the Queenis Grace Dowager, Regent of this Realme, and three Estaites thereof: That in all times cumming, quhat-sumever partie proponis falset, & takis on hand to improove ony Charter, Precept, instrument of saising, contract, obligation, acquittance, testament, or uthur writing quhat-sumever, before the Lordes of our Sovereaine Ladies Councel and Session, Schireffes, Stewardes, Baillies of Royalties or Regalities, their Deputes, Provostes, Aldermen, Baillies of Burrowes, or ony uthur Judge Spiritual or Temporal within this Realme, & failzies in the improbation of the same, the said partie sall be condemned at the giving of the sentence in the principal matter, to paye ane pecunial summe, as paine arbitral, at the sight and discretion of the saidis Lordes, or uthers Judges quhat-sumever: That ane halfe thereof to be applyed & payed to the Queenis Grace, and the uthur to the partie adversar. Providing alwaies, that there sall be na terme granted, set nor affixed to the said partie

<sup>80</sup> This act was ratified by 1592, ch. 78.<sup>81</sup> In reference to this act, see Hume, vol. i. p. 82.

takand on hand, and offering to improve, quhill they finde caution then presently acted in judgement, for payment of the said paine, gif the saidis Lordes, Schireffes, or uthers Judges understandis, that the saidis parties may get sik caution, and failzieing thereof, the saidis parties themselves to bee then acted for the samin : Providing alswa, that in all sik maters of improbationes to be proponed or mooved at the Queenis Grace instance, or her Hienesse Advocates, the promoter and instructor of the cause, finde sik caution and be acted, as said is : And this to be extended for finding of sik caution, & acting alsweil at the raising of the summons or precept, as objection of falsed, and offering to improve at any part of the processe.<sup>82</sup>

### APUD EDINBURGH,

IV DIE JUNII, A.D. M,D,LXIII.

#### 3. *Anent cruves and zaires.*

THE Queenis Majestie, and the three Estaites of this present Parliament, ratifies and apprievis the acte maid be her Hienesse maist Noble Gud-schir, King JAMES the Fourth of gude memorie, of the quhilk the tenour followis.

ITEM, It is statute and ordained, that all cruves & fish dammes that ar within Salt waters that ebbis and flowes, be all uterlie destroyed and put downe, alsweil, they that pertainis to our Soverain Lord, as uthers throw all the Realme. And anentis cruves in fresh waters, that they be maid in sik largenesse, and sik dayes keiped, as is contained in the actes and statutes maid there-upon of before, with this addition following: That is to say, that all cruves and zaires, that ar set of late upon sand, and schauldes, far within the water, quhair they were not of before, that they bee incontinentane tane downe and put away, and the remanent cruves that ar set and put upon the water sandes, to stande still quhill the first day of October nixt-to-cum, and incontinent after the said first day, to be destroyed and put away for ever. And for execution of this act, ordainis everie Earle, Lord, Barronne, and everie Gentle-man landed, within his awin boundes, to cause remove, destroy, put downe, and take awaye the saidis cruves and zaires, in maner fore-saide, *respective*, under the paine of ane hundreth poundes to bee taken up of their gudes, that puttis not this act to dewe execution, and the said summe to be in-brocht and applyed to our Soveraine Ladies use, and that everie Schireffe, Stewarde, Baillie, alsweil of Regalitie as Royaltie, their deputies & uthers Judges within their awin Jurisdictiones, take gude attendance and see, that as is contained in this present acte be done, and put to execution in all poyntes, according to the tenour of the samin : And failzieing thereof, that everie Schireffe, Steward, Baillies, alsweil of Regalities, as Royalties, and uther Judges, within their awin Jurisdiction, as saide is, up-take and in-bring the saide paine of ane hundreth poundes of everie Earle, Lorde, Barronne, Gentle-man landed, or uthers negligent in the premisses, and make compt thereof zeirliche in the Checker : And gif the saidis Schireffes, Stew-

<sup>82</sup> This act, as well as a relative act of sederunt dated 11th June 1596, are in force only in those cases where improbation is pleaded by way of exception. By modern practice, the party pleading improbation by way of exception, is ordered by the Judge to consign in the hands of the clerk of Court the sum of L.40 Scots, which he forfeits to his adversary if his allegation shall appear calumnious.



ards, Baillies of Regalities or Royalties, beis foundin negligent in execution of their offices, anent this acte, that the foresaid summe be up-lifted of themselves, & in-brocht to our Sovereine Ladies use, and that but prejudice of the paines to be execute upon the foresaidis Earle, Lorde, Barronne, Gentle-man, or uther contraveners of the foresaide acte: Providing alwayes, that this acte on na-ways be extended to the cruves and zaires being upon the water of *Solway*.<sup>83</sup>

8. *Gleibes and manses may not be set in few or lang tackes: The manse perteinis to the Minister.*

ITEM, Because it is understandin to our Sovereine Ladie, and the three Estaites of this Realme, that the parsones, Vicars, and uthers Kirk-men within the samin, hes set in few or lang tackes ane great part of their manses and gleibes, quhair-throw there is na sufficient dwelling place for them that servis, and suld serve and minister at the Kirkes, to remaine thereat, for the instruction of the Parochiners: For remeid hereof, it is statute and ordained be our said Sovereine Ladie, with the advise of the Estaites foresaid, that na Parson, Vicar, nor uther Ecclesiastical person, set in few, or lang tackes, onie of their manses or gleibes, pertaining to the saidis Kirkes, without special licence and consent of the Queenis Grace in writ. And alsua it is statute and ordained, that they that ar appoynted or to be appoynted to serve & minister at ony Kirk in this realm, have the principal Manse of the Parson or Vicar, or sa-meikle thereof, as sall be fundin sufficient for staking of them: to the effect that they may the better await upon the charge appointed & to be appoynted unto them, quhidder the saidis gleibes be set in few or tack of before or not: Or that ane reasonable and sufficient house be bigged to them beside the Kirk, be the Parson or Vicar, or uthers havand the saidis Manses in few or lang tackes: And this to be done betuixt and the first day of November, nixt-to-cum. And further, sa-meikle land to be annexed to the saidis dwelling places of them, that servis and Ministeris at the Kirk, as sall be hereafter with gude advisement appoynted.<sup>84</sup>

10. *Anents adulterie.*

ITEM, For-sa-meikle as the abhominabil and filthie vice and crime of adulterie, hes bene perniciously and wickedly used within this Realm in times bygane, be sindrie lieges heirop, havand na regaird to the commandementes of God, bot to their awin sensualitie and filthie lustes & pleasour theirop. And for eschewing of the samin in times cumming: It is statute and ordained be the Queenis Majestie, and three Estaites in Parliament, that all notour and manifest committers of adulterie in onie time to cum, after the dait hereof, sall be punished with all rigour unto the death, alsweil the woman as the man, doer and committer of the samin, after that dew monition be maid to abstaine fra the said manifest & notour cryme, And for uther adulterie, that the Actes and Lawes maid their-upon of before, be put to execution with all rigour. And als declaris, that this act on na wise sall

<sup>83</sup> In reference to this act, which ratifies 1488, ch. 16, see *Little v Grierson*, 7th December 1824, 2 S. & D., and *Oswald v. Macwhir*, 13th April 1835, 1 Shaw and Maclean, p. 393. See also latter part of note annexed to act 12th of Parliament, 26th May 1424.

<sup>84</sup> This is the first act respecting manses and glebes after the abolition of Popery in Scotland. It is explained and ratified by 1572, ch. 5, and subsequent statutes. See *Dunlop on Parochial Law*, p. 83, *et seq.*

prejudge onie partie to persew for divorcement, for the crymes of adulterie before committed, conforme to the Law.<sup>85</sup>

12. *Anentis the reparrelling and uphalding of parochie Kirkes and of Kirk-zairdes of the samin, for burial of the dead.*

IT Is Statute and ordained for uphalding and reparrelling of Parochie Kirkes and Kirk-zairdes of the samin, for burial of the dead within this Realme, that the Lordes of secreit Council put ordour thereto, and advise and consult how the samin sall be done and uphalden in times to cum. And quhat-sum-ever ordour that they sall happen to take for reparrelling and uphalding of the saidis Kirkes and Kirk-zairdes thereof: The Queenis Majestie, with the advise of the three Estaites of this Realme in this present Parliament, hes declaired and declairis, that quhat-sum-ever ordour beis maid and set forth be the saidis Lordes of secreit Council, and execution to be declaired be them thereupon, to be sufficient, and of als greit strength and effect, as & the samin had bene expresly contained in this present act.<sup>86</sup>

17. *All Notares suld be presented be the Queene, and admitted be the Lordes of Session.*

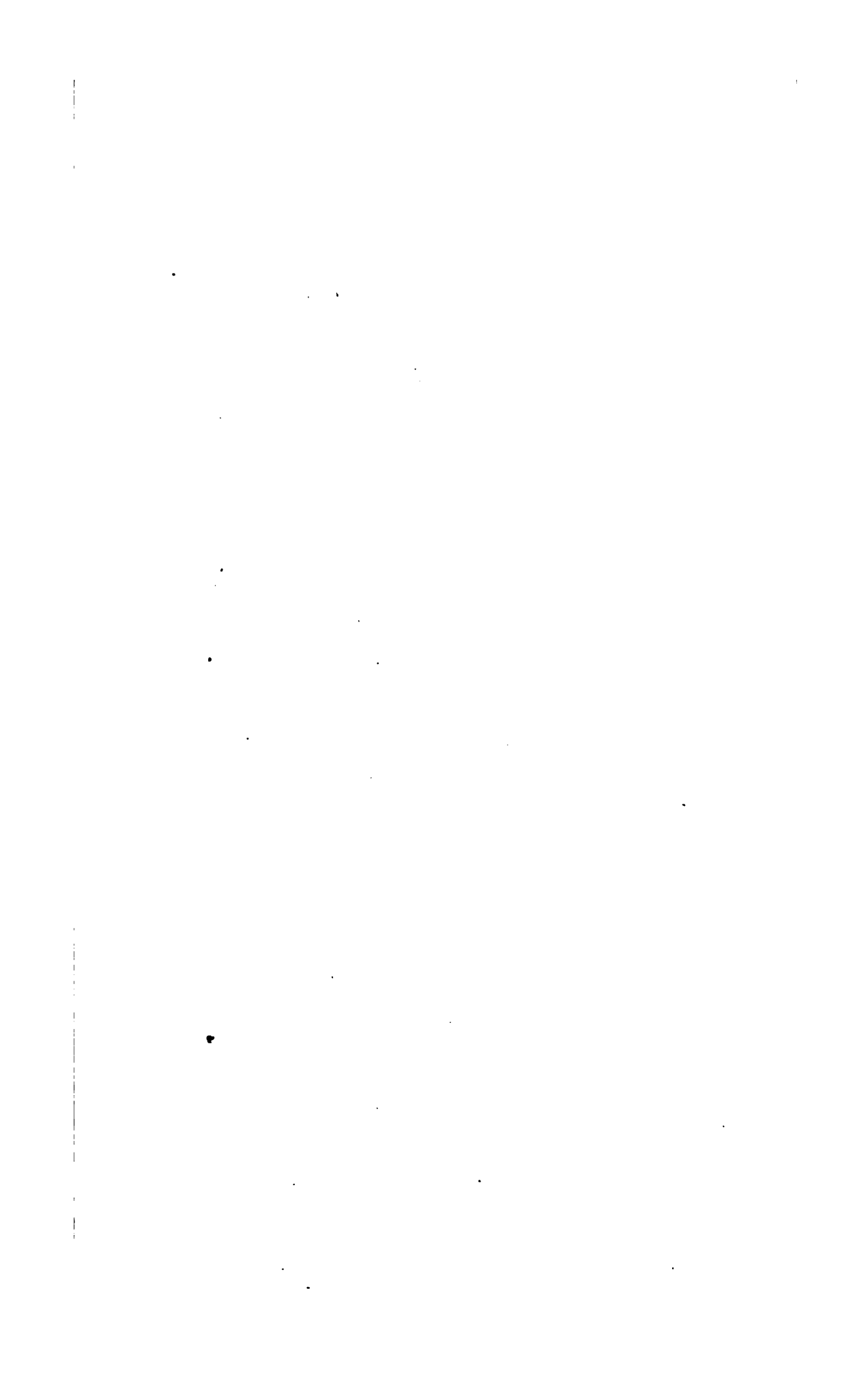
ITEM, Because our Soveraine Ladies Lieges are greatumlie hurt be unworthy and in sufficient Notares, not qualified as effeiris, to be in making of Instrumentes and uthers writtings, according to their office:

IT Is statute and ordained be our Soveraine Ladie, with the advise of the three Estaites, that na person tak upon hand to use nor exerce the office of Notarie, be na maner of creation, to be maid in onie time to cum fra this day furth, under the paine of death, without they be maid and creat be the Queenes Majesties special letters, and theirafter examined and admitted be the Lordes of Session and College of Justice, quha sall tak their aithes for dew and lauchful using of the said office of Notarie, and cause register their signe and subscription, quhilk they sall use in all times after their said admission. And gif onie person or persones, attemptis or dois in contrair heirop, in creating or making Notares, or using of the said office utherwaies nor said is, they sall be punished to the death and their instrumentes, nor notes to mak na faith.<sup>87</sup>

<sup>85</sup> In reference to this act, see Hume, vol. i. p. 454.

<sup>86</sup> This act appears to be the foundation of the present law for the repairing of kirks and kirk-yards. See 1572, ch. 15, and the act of Privy Council therein referred to, which were passed in furtherance of the objects of this act. See also Dunlop on Parochial Law, p. 1, *et seq.*

<sup>87</sup> This act is still substantially in force, so far as it requires the administration of the oath *de fidei administratione*, and the registration of the notary's sign and subscription.



ACTA PARLIAMENTORUM  
REGIS JACOBI SEXTI.

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APUD EDINBURGH,  
XV DIE DECEMBRIS, A.D. M,D,LXVII.

3. *Anent the abolishing of the Pape, and his usurped authoritie.*

ITEM, Our Sovereine Lord, with advise of his dearest Regent, and three Estaitis of this present Parliament, ratifyis and apprevis the Act under written, maid in the Parliament haldin at *Edinburgh* the 24. day of August, the zeir of God 1560. zeiris. And of new in this present Parliament, statutis and ordainis the said Act to be as ane perpetual Law, to all our Sovereine Lordis Lieges, in all times cumming. Of the quhilk the tenour followis. ITEM the three Estaitis understanding that the jurisdiction and authoritie of the Bischop of *Rome*, called the Pape, used within this Realme in times bypast, hes not onely bene contumelious to the eternal God, but also very hurtful and prejudicial to our Sovereines authoritie, and commoun weill of this Realme. THEIRFOIR it is statute and ordained, that the Bischop of *Rome*, called the Pape, have na jurisdiction nor authoritie within this Realme, in ony time cumming. And that nane of our said Sovereines subjects, in ony times heirafter, sute or desire title or richt of the said Bischop of *Rome*, or his sect, to ony thing within this Realme, under the paines of Barratrie, that is to say, proscription, banishment, and never to bruke honour, office, nor dignitie within this Realme. And the contraveners heirof to be called before the justice or his deputes, or before the Lords of the Session, and punished therefor, conforme to the Lawes of this Realme. And the furnischers of them, with finance of money, and purchassers of their title of right, or maintainers, or defenders of them, sall incurre the samin paines. And that na Bischop nor uther Prelat of this Realme, use ony jurisdiction in time cumming, be the said Bischop of *Romes* authoritie, under the paine fairsaid. And therefor of newe decernis and ordainis, the contraveners of the samin, in ony time hereafter, to be punished according to the paines in the fairsaid Act above rehearsed.

4. *Anent the annulling of the Actes of Parliament, made against God his word, and maintenance of Idolatrie in ony times bypast.*

ITEM, Our Sovereine Lord, with advise of his dearest Regent, and three Estaitis of this present Parliament, ratifyis & apprevis the Acte under written, made in the Parliament haldin at *Edinburgh*, the 24. day of August, the zeir of God, ane thousand five hundreth threescore zeiris. And of new in this present Parliament statutis and ordainis the said Act, to be as a perpetual Law to all our Sovereine Lordis liegis in all times cumming. Of the quhilk the tenour followis. THE quhilk day, For-sameikle as there hes beene divers and sindrie Acts of Par-

liament, made in King JAMES the First, Secund, Thrid, Fourt and Fift times, Kinges of SCOTLAND for the time, and als in our Soveraine Ladies tyme, not aggreing with Gods haly word, and be them divers persones tuke occasion to maintaine Idolatrie and superstition within the Kirk of GOD, and repressing of sik persones, as were professours of the said word, quhairthrow divers innocents did suffer. And for eschewing of sik inconvenientes in time cumming, the three Estaites of Parliament, hes annulled, and declared all sik Acts made in times bypast, not agreing with God his word, and now contrary to the Confessioun of Faith, according to the said word, published in this Parliament, to be of nane availle, force nor effect. And decernis the said Acts, and every ane of them, to have na effect nor strength in time to cum, bot the samin to be abolished and extinguished for ever, in sa far as any of the fairsaidis Acts are repugnant, and contrarie to the Confessioun of Faith, and word of GOD fairsaid, ratyfied and approved be the Estaites in this present Parliament. And therefore decernis and ordainis, the contraveners of the samin Act, in ony time hereafter, to be punished, according to the Lawes. Of the quhilk Confession of the Faith, the tenour followes.<sup>88</sup>

*7. Admissioun of Ministers : of laick Patronages.*

ITEM, It is statute, and ordained be our Soveraine Lord, with advise of his dearest Regent, and three Estaitis of this present Parliament, that the examination and admission of Ministers, within this Realme, be only in the power of the Kirk, now openlie, and publickly professed within the samin. The presentation of laick Patronages alwaies reserved to the Just and auncient Patrones. And that the Patroun present ane qualified persoun, within sex Monethes (after it may cum to his knowledge, of the decease of him, quha bruiked the Benefice of before) to the Superintendent of thay partis, quhair the Benefice lyes, or uthers havand commission of the Kirk to that effect ; utherwaies the Kirk to have power to dispone the samin to ane qualified person for that time.

PROVIDING that in caise the Patron present ane person qualified to his understanding, and failzeing of ane, ane uther within the said sex Moneths, and the said Superintendent or Commissioner of the Kirk, refusis to receive and admit the person presented be the Patron, as said is : It sall be lesum to the Patron to appeale to the Superintendent, and Ministers of that Province quhair the Benefice lyes, and desire the person presented to be admitted, quhilk gif they refuse, to appeale to the general Assemblie of this hail Realme, be quhome the cause beand decyded, sall take end, as thay decerne and declair. §§

<sup>88</sup> The Confession of Faith, finally adopted in Scotland, will be found annexed to 1690, ch. vii.

<sup>89</sup> This is the first act relating to patronage after the introduction of the new religion. In elucidation see Dunlop on Parochial Law, p. 179, *et seq.*, and Earl of Kinnoull &c. v. the Presbytery of Auchterarder, 5th March 1838, 16 S. & D., and Maclean and Robinson's House of Lords' Reports, p. 220, 3d May 1839.

<sup>90</sup> The following act appears in Mr Thomson's edition of the Scots Acts, and in the edition of 1566, but not in the editions of 1597 and 1681 :—

*" XII. Anent the Jurisdiction of the Kirk.*

" ITEM, Anent the Artickle proponit & geuin in be the Kirk to my Lord Regent and " the thre Estatis of this present parliament, anent the Jurisdiction justlie appertening to the " trew Kirk, and immaculat Spous of Jesus Christ, to be declarit and expressit as the ar- " tickle at mair length is consauit. The Kings grace with auise of my Lord Regent, and " thre Estatis of this present parliament, hes declarit and grantit Jurisdiction to the said

13. *Anent the disposition of Provestries, Prebendaries, & Chaplaneries, to bursaris to be found in Colleges.*

ITEM, For-sa-meikle as the zouth is not onelie seene to preserve the commoun weill, bot alsua of them mon rise sik, as after this mon serve in the Kirk of God, within this Realme, and to the commoun weill of the samin. And because the povertie of many is in sik sort, that they may not hald their Children at letteris quhairby the maist part of the zouth of this Realme wantis the guiftis and graces of learning, requisite to that charge. For remeid heirof: OUR SOVERAINE LORD, with advise and consent of my Lord Regent, and the three Estaites of this present Parliament, hes statute and ordained, that all Patronis havand Provestries, or Prebendaries of Colleges, Alterages or Chaplaneries, at their giftis and disposition, may in all times cumming, at their pleasure present the samin to Bursaris, quhom the pleise to name, to studie vertew and letteris, within ane College of ony of the Universities of this Realme, there to remaine for sik space, as the Patron foirsaid pleasis to hald him at vertew and learning, within the foirsaid College, and as sall be aggried upon be the Patronis of the saidis Provestries, or Prebendaries, with the Principal and Maisters of the College of the Universities. And after the Patron removeth that Bursar furth of the said College, to present ane uther. And swa furth fra ane to ane uther, to the effect foirsaid, at the Patronis pleasure: notwithstanding ony fundatioun, or confirmatioun past, be quhat-sumever autoritie in ony times bygaine. Anent the quhilk our Sovereine Lord, my Lord Regent, and the three Estaites of this present Parliament, dispensis: Swa that the saidis Patronis may dispone their Provestries, and Prebendaries, to sik Bursaris, as they sall think expedient, als oft as neid beis. Quhilk sal be na hurt, nor prejudice to their Patronage, notwithstanding their fundationes, and Confirmationes quhat-sumever, or ony provision contained thereintil. And therefore our SOVERAINE LORD, my Lord Regent, and the three Estaites foressaides, heartelis requests all Patrones of Colleges, Prebendaries, and Provestries, to graunt and dispone their Provestries and Prebendaries to the Bursaris foressaides, in maner above specified. Swa that letters may be authorized, and the zouth sufficientlie

" Kirk quhilk consistis and standis in preiching of the trew word of Jesus Christ, correction of maneris and administratioun of haly sacramentis: And declaris that thair is na " vther face of Kirk, nor vther face of Religioun, than is presentlie be the favour of God " establisht withint his Realme. And that thair be na vther Jurisdiction ecclesiasticall " acknowledgeit within this Realme vther than that quhilk is and salbe within the same " Kirk, or that quhilk flowis thairfra cöcerning the premissis. And forther, our Sourene " Lord, with auise of my Lord, Regent, and thre Estatis foirsaidis his geuin, and geuis power " and commissioun to Schir James Balfour of Pettindreich Knycht, Priour of Pettinweme, " Mark Commadatour of Newbottill, Johne Priour of Coldinghame Lord Preive Seill, " Maister James Mackgill of Rankelour Nether, Clerk of Register, Williame Maitland " younger of Lethingtoun Secreter to our Souvrane Lord, Schir Johne Bellenden of Auch- " inoull Kncht, Justice Clerk, Johne Erskine of Dune, Maister Johne Spottiswood, Super- " intendant of Lowthiane Johne Knox, Maister Johne Craig, and Maister David Lindesay, " Ministeris of the worde of God. To seirche furth mair speciallie and to consider quhat " other speciall pointis or clausis sould appertene to the jurisdiction privilege, and autho- " ritie of the said Kirk. And to declair thair minds thairanentis, to my Lord Regent, and " thre Estatis of this Realme, at the next Parliament. Swa that thay may tak ordour thair- " intill and authoreis the samin be act of Parliament, as salbe found agreeabill to the word " of God." This act is of great importance in reference to the jurisdiction conferred upon the Kirk by Parliament at this time. See Earl of Kinnoull, &c. v. Presbytery of Auchter- arder, 27th February and 5th March 1838, 16 S. & D., and Maclean and Robinson's House of Lords' Reports, p. 220, 3d May 1839.

brought up in vertew and learning, to the glory of God, and comfort of the common weill of this Realme.<sup>91</sup>

15. *Anent them that committis Incest.*

ITEM, Forsameikle as the abhominable, vile, and filthie lust of Incest, is sa abhominable in the presence of God, and that the samin Eternal God, be his expresse word, hes condemned the samin, and zit neverthelesse the said vice is sa used within this Realme, and the word of God is in sik sort contemned be the users thereof, that God be his just judgements hes occasioun to plague the Realme, where the said vice is committed, without God of his mercie be mair gracious, and remeid be provided, that the said vice cease in time cumming. THEREFOIR our Sovereine Lord, with advise and consent of my Lord Regent, and the three Estaites of this present Parliament, statutes and ordaines, that quhat-sumever person or persones, that committes the said abhominable cryme of Incest, That is to say, quhat-sumever person or persones they be, that abuses their bodie with sik persones in degrie, as God in his word hes expreslie forbidden, in ony tyme cumming, as is contained in the xvij. Chapter of *Leviticus*, sall be punished to the death.<sup>92</sup>

16. *Anent lawful mariage of the awin blude, in degries not forbidden be God his word.*

ITEM, Our Sovereine Lord, with advise & consent of my Lord Regent, and the three Estaites of this present Parliament, hes statute, and ordained, that the halie band of mariage, made be all Estaites and sorts of men and women, to be als lawful and als frie, as the Lawe of God hes permitted the samin, to be done, without exception of person or persones. And hes declared, and declares, that secunds in degrees of consanguinitie, and affinitie, and all degries outwith the samin, contained in the word of the Eternal God, and that are not repugnant to the said word, might, and may lawfully marry at all times sen the viij. day of March, the zeir of God ane thousand five hundreth fiftie aucht zeiris, notwithstanding ony Law, statute, or constitution maid in the contrare. And ratifyis and appreis all the said mariages done sen the said day. And the bairnis gottin, or to be gottin in sik Mariage, to be as lauchful, asweil toward their successioun to landis, heritages, or ony uther liberties, as ony bairnis gottin in Mariage, and to be repute and esteemed, in all time to cume, lauchfullie gottin, in lauchful Mariage, notwithstanding any Lawes, statutes, constitutionis, or Actis, maid, or to be maid in the contrare.

22. *The Lordis of Session ar Judges to all Infeftmentes and giftes graunted, or confirmed in Parliament.*

ITEM, anent the petition proponed be the Senatoures of the College of Justice, beirand that there is divers persones, that hes persewed Actiones before them, for reduction of infeftmentes, quhilkis ar confirmed be our Sovereine Lordis Predecessours, quhilkis ar granted and confirmed in Parliament. And against the samin it is alledged, that the saide Senatoures are na wise Judges competent, to the reduction of ony sik infeftment.

Quhairfoir the saidis Senatoures hes referred the declaration, whither they be Judges competent, to ony sik reduction or not, to our Sovereine Lord and the three

<sup>91</sup> This act is ratified by 1592, ch. 89, which see. See also Erskine, b. i. tit. v. § 12.

<sup>92</sup> In reference to this act, see Hume, vol. i. p. 447.

**Estaties of Parliament.** And therefore desiring the sensement, and declaration of this present Parliament, quhat they sall do thereanent; **OUR SOVERAINE LORD**, with advise of his Regent, & the three Estaites of this present Parliament, declairis the saids Senatouris of the College of Justice, to be Judges competent, to the reduction of all sik Infertmentes, as said is, notwithstanding quhatsum-ever confirmation, or grant of Parliament past thereupon.<sup>93</sup>

30. *The denunciation of the Rebellion suld preceid the gift of escheit.*

**ITEM**, our Sovereigne Lorde, with advise and consent of his dearest Regent, and the three Estaites of this present Parliament, hes statute and ordained, that in all times cumming, na gift of escheit passe, with this clause following, (Or quhen it sall happen the offender to bee denounced rebel, and put to the horne) bot that the horning be execute befor the gift of the escheit bee disponed, utherwise the gift of escheit to be of nane effect.<sup>94</sup>

34. *Saisings within Burghs, suld be given be ane Baillie, and the Clerke.*

**ITEM**, Forsameikle as the great hurt, done of befor within Burgh, be giving of saisings privatlie, without anie Baillie, and ane common Clerke of Burgh, quhairthrow our Sovereaine Lordis liegis, may bee defrauded greatlie: **THEIRFORE** it is statute, and ordained be our Sovereaine Lord, with advise and consent of his Regent, and the three Estaites of this present Parliament, that na saisng be given within Burgh of ony maner of land, or tenement within the samin, in ony time cumming, bot be ane of the Baillies of the Burgh, and common Clerke theirow. And gif ony saisng beis utherwaies given heirafter to be null, and of nane avail force nor effect.<sup>95</sup>

37. *Malt-men suld not have ane Deakon.*

**ITEM**, It is statute and ordained, be our Sovereaine Lorde, his Regent, and three Estaites of this present Parliament, for the common weill of this Realme, that there be na Deakon of Craft of Malt-men, outhir to Burgh or to land, or ony uther part within this Realme. And gif ony writing, gift, or priviledge be given ony time befor: Our Sovereaine Lorde, with advise of his Regent, and three Estaites foirsaidis, decernis and declaris the samin to have bene fra the beginning, and to be in all time cumming null, and of nane avail, force nor effect. Sa that it sall never be lesum to ony of the Malt-men of this Realme, to have Deakons, bot to be repute na craft.<sup>96</sup>

40. *Anent the raysing of fire, and burning.*

**ITEM**, In the Parliament halden at *Edinburgh*, the xij. day of November, the zeir of God 1526. zeires. The quhilk day, anent the Artickle of slauchteris, mur-

<sup>93</sup> In reference to this act, see Erskine, b. i. tit. iii. § 18.

<sup>94</sup> This act is in force, so far as respects escheat following upon denunciation in criminal cases. No escheat is now consequent on denunciation for a civil debt. See 20th Geo. II. ch. 50.

<sup>95</sup> In reference to this act, see Erskine, b. ii. tit. iii. § 41, and b. i. tit. iii. § 23.

<sup>96</sup> This act is ratified by 1669, ch. 36. Mackenzie, in his *Observations*, says, that "the reason why maltmen are discharged to have a deacon, is because at their meetings they might easily conspire to set a price upon the victual and upon the ale and beer at their pleasure, and force the gentlemen to sell at any rate."



theris, burning : IT IS statute and ordained, that the Acts maid thereupon of before, and the auld Lawes be keiped, with this addition, that quha cummis and burnis folkis in their houses, and cornes, and wilful fyre-waysing, be treason, and lese-majestie, because sik deides ar exorbitant, and mair against the common weill, then uther crymes. And particular Justice airis, or general Justice airis, be set thereto, as sall pleis the Kings Majestie, his Councel, and the Justice for the time, with their consent. Providing, that it sall be lesum, to ony man to persew, and follow common thieves, and rebellis to take them. And gif they enter in houses, that it sall be lawful to invade, break or destroy the saidis housis, be fyre or utherwise, to the intent and effect of taking, or slaying of the saidis thieves, or rebelles, for the quhilk there sall follow upon the doeris, na paine, accusation, crime, bot to be free theirow at all times.<sup>97</sup>

## APUD EDINBURGH,

XXVI DIE JANUARIJ, A.D. M,D,LXXII.

### 5. *The explanation of the Act maid anent Manses and Glebes.*

Forsameikle as be act of Parliament; halden and begunne at *Edinburgh*, the fourth day of Junij, the zeire of God, ane thousand, five hundreth, threescoir three zeires; It was statute, and ordained, that na Parson, Vicar, nor uther Ecclesiastical person, suld set in few, or lang takkes, ony of their Manses, or glebes pertening to the Kirkes. And alsua that they that ar appoynted, or to be appoynted to serve or Minister at ony Kirk, within this Realme, suld have the principal manse of the Parsone or Vicar : or sameikle thereof, as suld be fund sufficient, for staiking of them, to the effect that they may the better await upon the charge appoynted, or to be appoynted to them, whither the saides glebes wer set in few, or takke of before, or not : Or that ane reasonabil and sufficient house, wer bigged to them beside the Kirke, be the Parsone or Vicar, or uthers havand the saidis Manses in few, or lang takkes. And farther, sameikle land to be annexed to the saidis dwelling places, of them that serves, or Ministers at the Kirk, as thereafter, with gude advisement, suld be appoynted, like as the said act, at mair length, proportis. Quhilk being in divers pairtes doubtful and incertaine, na gude execution hes followed thereupon, in time by-past. Therefore our Soveraine Lord, with advise of my Lord Regents grace, the three Estaites, and haill body of this present Parliament, findis and declaris, that the Manses, outhier pertening to the Parsone or Vicar, maist ewest to the Kirk, and maist commodious for dwelling, pertienes and sall perteine, to the Minister or Reader, serving at the samin Kirk : Together with four acres of land of the glebe at least, lyand *contigue*, or maist ewest to the said Manse, gif there be sa-meikle : And failzeing thereof, sa-meikle as there is to be marked, and speciallie designed be the Arch-bischop, Bischop, Super-intendent, or Commissioner of the diocese or province, the time of their nixt visitation, be the advise of ony twa

<sup>97</sup> The first part of this act is now superseded by the 18th art. of the Treaty of Union, and 7th Anne, ch. 21.

The general power given to private individuals to pursue and arrest common thieves and rebels does not now exist to the extent here conferred.

As to the law of arrest, see Hume, vol. ii. § 76.

of the maist honest and godlie of the Parochiners, quhilkes he sall require (not being possessours of the said Manses or glebes themselves) to joyne with him in execution hereof, whither the saidis Manses and glebes be set in few, or takkes of befoire, or not. And upon the said marking and designation, the Arch-bischope, Bischope, Super-intendent, or Commissioner, sall give his testimonial, bearing, how he with advise of sik twa of the Parochiners, hes visited the Manse and glebe, of sik an Kirk, and findes the samin occupyed be sik persones. And that they have appoynted, marked, and designed the said manse, with foure acres, or sik quantity of land adjacent thereto, to the use of the Minister, or Reader, that sall serve and Minister at the said Kirk, in time cumming. And upon the Ministers or Readers supplication, quhair withal the said testimonial sall be presented to the Lordes of Council, letters sall be directed, charging the occupyars, and possessours of the saidis Manses and acres of land, whither the samin be set in few or takes of before, or not, to remove, desist and cease theirfra, and enter the said Minister or Reader, to the possession of the samin, within ten dayes, under the paine of rebellion, and gif they failzie, to put them to the horne. And in case they be denounced, letters of caption, and uthers executorialles to be direct upon them, according to the lawes of this Realme, Quhilkes Manses & acres of land sa marked, and designed, as said is, it sall not be leasum to the Ministers, or Readers present, or to cum, to sell, annalie, set in few, or takkes, or to put ony in possession of the samin, in prejudice of their successours: bot the samin to remaine alwayes free to the use and easment of sik, as sall be admitted to serve, and Minister at the said Kirk. And quhair ony persones upon pretence of fewes or takkes, obtained of Manses or Glebes, hes maid sumptuous biggings thereon, fra the quhilks they think heavie to be dispossessed, or removed, that then the Arch-bischope, Bischope, Super-intendent or Commissioner, the time of their visitation, travel to agree the fewer or takkesman, and the Minister or Reader, be delivering to the samin Minister or Reader of ane uther Manse, quhilk sall be als gude, and ewest as the uther, be just estimation, the time that it was set in few, or takkes: to be bigged betuixt this and the first daye of October nixt-to-cum: togidder alwa with certaine acres of land adjacent thereto, in maner foresaid, for eschewing of debait and contention. Bot gif the fewer or takkesman, refusis willingly to condescend to the samin, then the execution to proceed, for removing fra the principal manse, and sa manie acres of land as is before specified, notwithstanding ony bigginges maid, or to be maid thereupon. Providing alwayes, that sa-meikle of the few mail be deduced to the person or persones, to quhom the saidis Manses or Glebes is set in few, *secundum ratam*: and sik-like, that the fewer have sufficient action, against the settar of the said Manse and Glebe, forsameikle entres silver, as he payed to the setter the time of the setting thereof, *secundum ratam*, as said is.<sup>28</sup>

15. *Anent the reparation of the Paroche Kirkis.*

FOR-sameikle, as there was ane Act made in the Parliament halden in the Moneth of Junij, the zeir of God 1563. zeiris, declairand, that whatsumever ordour suld be maid and set forth, be the Lords of secreit Council, for uphalding and reparrelling of Kirkes, and Kirk zairds, and the execution to be declared be them thereupon, to be sufficient, and to have als great strength and effect, as and the samin had bene expresslie contained, in the said Act of Parliament, as the samin

<sup>28</sup> This act is ratified by 1581, chap. i. See Dunlop, page 84, *et seq.*

at mair length proportis. According to the quhilk, ane Act of secreit Council was maid, for the bigging, mending, and reparation of Paroche Kirkes, of the dait, At *Strivling* the xiiij. day of September, the zeir of God foresaid. Quhilk Act, as zit, hes not tane execution in na place, because of the sleuth and unwillingnes of the Parochiners, quhilks were slaw, and refused to chuse persones to taxe their Nichtbouris : and that alsua, there was not Kirk-maisters or Deakons, appointed in the Parochin to receive the taxation appointed. FOR remeid quhair of, our Sovereine Lorde, with advise of his Regents grace, the three Estaites, and hail bodie of this present Parliament, ratifies and approves the foresaidis Actes of Parliament, and of secreit Council in all poyntes, with this addition. That quhair the Parochiners being required to elect and chuse persones, for making of the taxation, to the effect foresaid, refusis or delayis, or quhair there is na Kirk-maisters or Deacons appoynted ; That then the Arch-bischop, Bischop, Super-intendent, or Commissioner of the Kirkes, in time of their visitation, quhilk sall be betuixt and the first day of Junij nixt-to-cum : Sall at their discretioun, nominate and appoint persones in every Parochin, for making and setting of the taxation : as alsua for receiving of the samin. And decernis and declaris the said nomination and appoyntment to be sufficient, and siklike execution sall passe, for compelling of them, as micht have bene given and granted, be vertew of the said Act of secreit Council, in case they had bene elected be the Parochiners. And because, there hes bene diverse Paroche Kirkes, within this Realme demolished, casten downe and destroyed, for the maist part, and that certaine particular persones hes applyed the stanes, tymber, and uther graith pertaining thereto, to their awin particular use and profite. Therefore, ordainis ony one of the Parochiners of sik Kirkes to give their complaint to the Arch-bischop, Bischop, Super-intendent, or Commissioner thereof, upon sik persones, as they please to complene upon, and they being lauchfullie called, & just tryal taken in the said matter : And according to sufficient probation, to bee led and deduced there-intil, that the said Arch-bischop, Bischop, Super-intendent, or Commissioner pronounce, and give forth their decreit there-intil : Quhilk decreit, our Sovereine Lord, with advise of his said dearest Regent, & the three Estaites foirsaidis, decernis and declaris, to be all sufficient, as and the samin war given befor ony Judge Ordinar. And ordainis, the Lordes of Council and Session, to direct letters of horning or poynding thereupon, at the will and pleasure of the partie, quha sall happen to complene. And sik-like, our Sovereine Lord, with advise of his said dearest Regent, the three Estaites, and hail bodie of this present Parliament, ordainis the Persones of all Paroche Kirkes within this Realme, to furnish bread and wine to the Communion, how oft the samin sall be ministrat, within the samin Kirkes.<sup>99</sup>

<sup>99</sup> This act is ratified by 1581, ch. i. See Dunlop, p. 2, *et seq.*

The act of Privy Council ratified in this act is as follows :—

“ 13th September 1563.

“ The which day the Lords of Secret Council understanding that the paroch-kirks of this realm, partly by sloth and negligence of the Parishioners, and partly by oversight of the parsons, daily decay and become ruinous, and part of them are already fallen down, the parishioners no ways causing the same be mended, nor yet the parson doing what appertanis to him for upholding thereof ; where through the preaching of the Word of God, administration of the sacraments, and reading of the common prayers cease, and the people there through become altogether without knowledge and fear of God. Therefore the said Lords Ordain all parish kirks within this realm which are decayed and fallen down to be

## APUD HALYROODHOUS,

XXX DIE APRILIS A.D. M.D.LXXIII.

1. *Anent them that divertes fra uthers, being joyned of befoir, in lauchful Mariage.*

IT IS founden, and declared be our Sovereine Lorde, his Regentis Grace, the three Estaites, and hail bodie of this present Parliament: That in all times bypast, sen the trew and Christian Religion was publicklye preached, avowed, & established within this Realme, namelie, sen the Moneth of August, the zeir of God, ane thousand, five hundreth, threescoir zeires. It hes beene, and in all times cumming sall be lauchful; That quhat-sumever person, or persones, joyned in lauchful Matrimonie, husband or wife, divertis fra uthers companie, without ane reasonable cause alleged, or adduced befoir an Judge, and remainis in their malicious obstinacie, be the space of four zeires, and in the meane time, refusis all privie admonitions: The husband of the wife, or the wife of the husband, for dew adherence: That then the husband, or the wife, sall call & persew the obstinate person offender, befoir the Judge Ordinar for adherence. And in case no sufficient causes be alledged, quhairfoir na adherence suld be, bot that the sentence proceedis against the offender, refusand to obey the samin: The husband or the wife, sall meene themselves, to the superiour Magistrate, *videlicet*, the Lords of Session, & sall obtaine letters, in the four formes, conforme to the sentence of adherence: Quhilk charge being contemned, and therefoir being denounced rebel, and put to the horne: Then the husband, or the wife, to sute the spiritual jurisdiction and power, and require the lauchful Arch-bishop, Bishop, or Super-intendent of the countrie, quhair the offender remaines, to direct privie admonitiones to the said offender, admonishing him or her, as befoir, for adherence. Quhilkes admonitiones, gif he or she con-

“ repaired and up-bigged; and where they are ruinous and faulty, to be mended; and after that  
 “ they be sufficiently mended in windows, thack, and other necessities, to be maintained and  
 “ upholden upon the expenses of the Parishioners and parson in manner following: that is  
 “ to say, the two part of the expense thereof to be made by the Parishioners, and third part  
 “ by the parson; and that the samen may take effect with expedition, Ordains letters to be di-  
 “ rected to Officers of the Queen, Sheriffs in that part, to pass, and charge the Parishioners  
 “ of the Parish Kirks within this realm to elect and choose certain of the most honest qua-  
 “ lified men within their parishes to tax every one of them, effeiring to their substance, for,  
 “ furnishing of the two part of the expenses to be made in bigging and repairing of their  
 “ said parish Kirks; and that the said taxers to be chosen make the said taxations to the ef-  
 “ fect foresaid, within twelve days next after they be charged thereto; and after the said taxa-  
 “ tions be made, that the said parishioners make payment of the sums that they shall be  
 “ taxed, to the Kirk-masters, or deacons of the paroch to be appointed by them for receiv-  
 “ ing thereof, to the reparation of the said Parish Kirks; sicklike within twelve days next  
 “ after they be charged thereto, under the pain of rebellion; and failing thereof, to put them  
 “ to the horn. And also that the said messenger pass and sequester the fruits, teinds,  
 “ and profits of the said parochins, so far as may extend to the parson’s part of the same, to  
 “ remain in the parishioners’ hands, while the said parson put in the hands of the said Kirk-  
 “ master and Deacons, his part of the expenses to be made upon bigging and repairing of  
 “ the said Kirk, extending to the third part thereof; and the said sums being put in the  
 “ said Kirk-master or deacons’ hands, that they incontinent thereafter cause the said kirks,  
 “ ilk one within their own parochins, be repaired, bigged, and mended sufficiently, effeiring  
 “ to the sums that shall be consigned and put in their hands to that effect, under the said  
 “ pain of rebellion; and failing thereof, to put them to the horn.”

temptuously disobeys. That Arch-bishop, Bischop, or Super-intendent, to direct charges to the Minister of that Parochin, quhair the offender remaines, or in case there be nane, or that the Minister will not execute, to the Minister of the nixt adjacent Kirk theirto: Quha sall proceede against the said offender, with publick admonitions, and gif they be contemned, to the sentence of Excommunication. Quhilk anis being pronounced, the malicious and obstinat defection of the partie offender, to be ane sufficient cause of divorce, and the said partie offender to tyne and lose their tocher, & *donationes propter nuptias*.<sup>100</sup>

## APUD STRIVILING,

XV DIE JULII, A.D. M.D.LXXVIII.

### 6. *The Glebes of the Ministers and Readers sall be free of Teindes.*

ITEM, Anent the Artickle proponed, gif Ministers & Readers aucht & suld pay teind for their Glebes & Kirk-lands, designed to them, conforme to the act of Parliament, maid thereunto; for answer thereto; Our Sovereine Lord, with advise & consent of the three Estaites of this present Parliament, findis and declairis, that the saidis Ministers and Readers, aucht and suld pay na Teind, for their saidis Glebes and Kirk-landes, extending to four aikers of land, designed to them, conforme to the said act. Bot decernis and declaris them to be free of their saidis Teindes, and dischargeth them *simpliciter* thereof in all time cumming.<sup>101</sup>

### 11. *The ratification of the Priviledge of Burrowes, with addition.*

OUR Sovereine Lord, with advise of his three Estaites of this present Parliament, hes ratified and apprevd, and be the tenour heirof, ratifies and apprevs of new, all actes & constitutiones of Parliament, maid be quhat-sumever our Sovereine Lordis predecessours of befor, in favours of the Burrowes and Burgesses of this Realme, inhabitantes of all the Burrowes of the samin, with all priviledges, freedomes, immunities and liberties, granted and given to them, and everie ane of them, and decernis and delaris the samin, to have full strength, force and effect in all times heirafter, swa that the samin may be put to full and dew execution in all poynts, and to stand as ane perpetual Law to them and their successours, with this addition: Givand them freedome and priviledge, to convene four times in the zeir, for sik matters as concernes their Estait: And that in quhat Burgh it sall be thoct maist expedient, be the maist pairt of the saidis Burrowes. Providing alwaies for eschewing of tumultes, that there be present, as the saidis conventiones for everie Burgh in number, ane: except the Towne of *Edinburgh*, to have ane maa, nor the uther Burrowes.<sup>102</sup>

<sup>100</sup> This act continues to be the authority for actions of divorce on account of desertion. Letters of four forms are superseded by letters of horning, and the Bishop by the Presbytery. See Erskine b. i. tit. vi. § 44, and Lothian on Consistorial Law.

<sup>101</sup> In reference to this act, which was ratified by 1581, ch. 1, and 1592, ch. 8, see Connell on Tithes, vol. ii. p. 51.

<sup>102</sup> This act was ratified by 1581, ch. 26. See 1487, ch. 17, and Note thereon.

13. *Anent dowbil confirmation of fewes of Kirklandes, and landes halden immediatlie of our Sovereine Lord.*

FORSAMEIKLE as it is statute and ordained, be act of Parliament, maid in our Sovereine Lordis dearest Mothers time, that na infeftment of Kirk-landes, set sen the viij. day of March, the zeir of God, ane thousand, five hundredth lvij. zeires, suld be of ony force or effect, without the samin war dewlie and lauchfullie confirmed be our Sovereine. And als, forsameikle as it happenis, that doubil infeftmentes of few-ferme, of ony portion of land, is given be ane Ecclesiastical person, to divers persones : & sum times be divers Ecclesiastical persones, to wit, the predecessour and successour, to divers persones in few-ferme, and zit nouthor of the saidis infeftments can take effect, or be of avail, without they be dewlie and lauchfullie confirmed be our Sovereine Lord. And als, it is oft-times seene, that confirmations ar granted of baith, the saidis divers infeftmentes, at divers times be the sute of the parties : like as it is founden be sundry ordinances of the privie Councel, that our Sovereine Lord, and his hienesse Compositours, aucht not to deny his confirmation, upon the reasonabil expenses of the partie, suitand upon their awin peril. And likewise, divers alienationes of landes, halden immediatlie of our Sovereine Lord, being maid be ane person, to divers persones, double confirmationes ar granted be our Sovereine Lord thereto, quhair as, ane of the saidis confirmations aucht, and can only take effect in all clauses above specified, And notwithstanding, it is the occasion of great debait amangis the lieges, to their great expenses, alsweill in payment of their compositiones, as that the samin breadis the occasion of great play. FOR remeid thereof, it is concluded, statute and ordained, be our Sovereine Lord, and the three Estaites of Parliament, that quhasaever obtienes, or hes obtained, the first confirmation of ony infeftment, outhor of Kirk-lands, or uther landes, halden of our Sovereine Lord : that the first confirmation sall be of avail, force and effect, and sall prevail the secund. The said first infeftment, quhilk is confirmed, being vailzeable in the selfe, and lauchfully done. And in this case, the last confirmation sall not be respected, albeit the samin confirme the first infeftment, bot the first confirmation of the laste infeftment sall prevaille, the last confirmation of the first infeftment, be way of exception or reply, without ony Summonds or Processe of reduction. It is alwaies provided, that gif the principal infeftment first confirmed, or ony uther substantial cause, be the foirsaid confirmation, be of nane avail or unlauchfullie maid, to the prejudice of ony uther pairtie, havand interesse to the landes therein contained and quha may be excluded be reason of the first confirmation, the said partie havand interes, sall be heard to accuse or reduce the said infeftment first confirmed, or urtherwaies, to move action, against the samin, as accordes of the Law, quhiddir they have obtained confirmation of their infeftment, or not. It is als, statute and ordained, that na dowble confirmations of infeftments of Kirk-landes, or uthers, halden of our Sovereine Lord, be granted heirafter, and discharges the keepers of the Signet, Privie and great Seilles, that they passe not double confirmations : And gif the saidis double confirmations passe in time cumming, our saide Sovereine Lord, with advise of his saidis three Estaites, decernis and declaris, the last confirmation to be of nane avail : Providing, as is above specified.<sup>103</sup>

<sup>103</sup> Reference to this act, see Stair, b. ii. tit. iii. § 28 ; and Erskine, b. ii. tit. vii. ch. 14.

## APUD EDINBURGH,

XX DIE OCTOBRI, A.D. M,D,LXXIX.

7. *Quhairin consistis the jurisdiction of the Kirk.*

OUR Sovereine Lord, with advise of his three Estaites of this present Parliament, hes declared and granted jurisdiction to the Kirk, quhilk consistis and stands in the preaching of the trew worde of JESUS CHRIST, correction of maners, and administration of the halie Sacraments, and declairis that there is na uther face of Kirk, nor uther face of Religion, then is presentlie be the favour of GOD establisched within this Realme, and that there be na uther jurisdiction Ecclesiastical acknowledged within this Realme, uther, then that quhilk is, and sall be within the samin Kirk, or that quhilk flowis their-fra, concerning the premisses.<sup>104</sup>

8. *Discharge of Mercattes, and labouring on Sabboth-dayes, or playing and drinking in time of Sermon.*

ITEM, For-sa-meikle as it is statute and ordained, be a gude and godlie Act, maid in the dayes of King JAMES the fourth, our SOVERAINE LORDIS Grandschir, of worthie memorie, that there be na Mercattes nor Faires halden upon Haly dayes, nor zit within Kirkes, or Kirk-zairdes upon Haly dayes or uther dayes, under the payne of escheitting of the guddes; Quhilk Act, our Sovereine Lord and his three Estaites, ratifies and appreis and ordainis the same to have effect and execution in time cumming. And seeing that the Sabboth-day, is now commonly violate and broken, alsweil within burgh, as to landwart, to the great dishonour of GOD, be halding and keiping of the saidis Mercattes and Faires, on Sabboth-dayes, using of handie-labour, and woorking thereon, as on the remanent dayes of the oulk, and be gamming and playing, passing to Tavernes and Aile-houses, and wilful remaining from their Paroche Kirk, in time of Sermon or prayers on the Sabboth. THEIRFOIR his Majestie, and his three Estaites, in this present Parliament statutis and ordainis, that there be na Mercattes nor Faires, halden upon the Sabboth-day, nor zit within Kirkes or Kirk-zairdes, that day or ony uther day, under the paine of escheitting of the guddes, to the use of the pure within the Paroche. And sik-like, that na handie-labouring, nor woorking, be used on the Sabboth-day, nor na gamming and playing, passing to Tavernes and Aile-houses, or selling of meat or drink, or wilful remaining fra their Paroche Kirk, in time of Sermon or Prayers on the Sabboth-day be used under the paines following: That is to say, of everie person, for the handie-labouring and woorking, commonlie used be the purest sort, ten-schillings, and for gamming, playing, passing to Tavernes and Aile-houses, selling of meat and drink, and wilful remaining from their Paroche Kirk, in time of Sermon or Prayers on the Sabboth-day, of everie person twentie schillings, to be applyed to the helpe and reliefe of the pure of the Parochin. And in case of the refuse, or inhability of ony person offending in the premisses, to pay the saids paines *respective*, presentlie and indelaiedlie, upon their apprehension or conviction, after lauchful tryal, he or sche, sall be put and halden in the stoks, or sik uther engine, devised for publik punischment, be the space of twenty foure houres. And for execution heirof, the Kingis

<sup>104</sup> This act was ratified by 1581, ch. 1, and is important as an authority in reference to the jurisdiction of the Kirk.

Majesties commission of Justiciarie, sall be granted to sum persone in every Parochin, best affected and maist abill to performe the same, at the request of the Minister.<sup>105</sup>

12. *For punischment of strang and Idle Beggars, and reliefe of the pure and impotent.*

FORSAMEIKLE as there is sindrie lovabil Acts of Parliament maid be our Soveraine Lords maist nobil Progenitours, for the stanching of maisterful and idle Beggars, away putting of sornares, and provision for the pure : Bearing, that nane sall be thoiled to beg, nouthir to Burgh nor to land, betwixt 14. and 70. zeires. That sik as makes themselves Fules and ar Bairdes, or uthers siklike runners about, being apprehended, sall be put in the Kingis Waird or irones, sa lang as they have ony gudes of their awin to live on. And fra they have not quhairupon to live of their awin, that their eares bee nayled to the Trone, or to an uther tree, and their eares cutted off, and banished the countrie, and gif thereafter they be found againe, that they be hanged.

ITEM, That nane be bee thoiled to begge in ane Parochin, that ar borne in ane uther. That the heades-men of ilk Parochin, make takinnes, and give to the Beggares theirof, that they may bee susteined within the boundes of that Parochin. And that nane uther bee served with almes, within that Parochin, but they that beares that takinne allanerlie, as in the Actes of Parliament maid theiranent, at mair length is contained. Quhilkes in time bygane, hes not bene put to dewe execution, throw the iniquitie and troubles of the time by-past, and be reassoun that there was not heirtofoir ane ordour of punischment, sa speciallie devised, as need required, bot the saidis Beggares, besides the uthers inconvenientes, quhilks they daylie produce in the commounwealth, procures the wrath and displeasure of GOD, for the wicked and and ungodlie forme of living, used amangs them, without marriage or baptizing of a great number of their bairnes. THEREFOIR now, for avoyding of the inconvenientes, and eschewing of the confusion of sindrie Lawes and Actes, concerning their punischment, standing in effect. And that sum certaine execution, and gude ordour may follow theranent, to the great pleasure of Almichtie GOD, and commoun weill of the Realme : IT IS thocht expedient, statute and ordained, asweil for the utter suppressing of the saidis strang and idle beggars, sa contagious enimes to the commoun weill : As for the charitabil releiving of aged and impotent pure peopil, that the ordour and forme following bee observed : That is to say, that all persones, being above the aige of fourteene and within the <sup>vaga-</sup> aige of threescoir and ten zeires, that heirafter ar declared and set foorth be this <sup>bounds &</sup> Act and ordour, to be vagaboundes strang and idle beggars quhilkes sall happen at <sup>idle beggars</sup> any time heirafter, after the first day of Januar nixt-to-cum, to bee taken wander- <sup>suld be pu-</sup> ing and misordering themselves contrarie to the effect and meaning of thir pre- <sup>nished.</sup> sentes, sall be apprehended, and upon their apprehension be brocht befor the Provost and Baillies within the Burgh, and in everie Parochin in Landwart, befor him that sall be constitute Justice be the Kingis Commission, or be the Lordis of Regalitie, within the samin to this effect : And be them, to bee committed in

<sup>105</sup> This is the first of a series of Scottish statutes passed after the introduction of the new religion, to protect the sanctity of the Lord's day. The subsequent acts are 1592, ch. 17; 1593, ch. 6; 1594, ch. 8; 1661, ch. 281, and 1663, ch. 43. In reference to these acts, see Hume, vol. i. p. 573, *et seq.* In Mr Thomson's Edition of the Scots Acts, the word "Sonday" is used throughout this act, in place of "Sabboth day" as above.



waird, in the commoun prison, stokkes or irons, within their jurisdiction, there to be keiped, unlatten to libertie, or upon bande or sovertie, quhill they be put to the knowlege of ane Assise, quhilk sall be done within sex dayes thereafter. And gif they happen to be convicted, to bee adjudged to be scourged and burnt throw the eare, with ane hot irone: The processe quhairrof sall be registrate in the Court buikes. Except sum honest and responsal man, will of his charitie, bee contented then presentlie, to act himselfe before the Judge, to take and keip the offender in his service, for ane haill zeir nixt following, under the paine of twentie pound, to the use of the pure of the Toun or Parochin. And to bring the offendour to the head Court of the jurisdiction at the zeires end, or then gude pruiße of his death, the Clerke taking for the said Acte, twelve pennies onely: And gif the offender depart and leave the service within the zeir, against his will that receivis him in service: Then being apprehended, he sall be of new presented to the Judge, and be his command, scourged & burnt throw the eare, as is foresaid. Quhilk punisshment, being anis received, he sall not suffer againe the like, for the space of threescoir dayes thereafter, bot gif at the ende of the saidis lx. dayes, hee be founden to be fallen againe in his idle & vagabound trade of life: Then being apprehended of new, he sall be adjudged, and suffer the paines of death as a thief.

Of him  
quha flyes  
fra his mas-  
ters service.

Quha suld  
be esteemed  
vagabounds  
and idle  
beggares.

And that it may be knawen, quhat maner of persones ar meant to bee idle and strang beggares, and vagabounds, and worthie of the punisshment before specified, IT IS declared, that all idle persones, ganging about in ony Countrie of this Realme, using subtil, craftie, and unlauchful playes, as Juglarie, Fast and-lous, and sik uthers. The idle peopil calling themselves *Egyptians* or any uther, that feinzies them to have knowlege or Charming, Prophecie, or uthers abused sciences, quhairby they perswade the peopil that they can tell their weirdes, deathes and fortunes, and sik uther phantastical imaginations: and all persones being haill and starke in bodie, and abill to woorke, alledging them to have bene herried or burnt, in sum far pairt of the Realme, or alledging them to be banished for slauchter, and uthers wicked deides: and uthers nouthar havand land nor Mais- ters, nor using ony lauchful merchandice, craft or occupation, quhairby they may win their livings, and can give na reckoning how they lauchfullie get their living: and all Minstrelles, Sangsters, and Tale-tellers, not avowed in special service, be sum of the Lords of Parliament or great Barronis, or be the head Burrowes and Cities for their commoun Minstrelles: all commoun labourers, being persones abill in bodie, living idle, and fleeing labour: all counterfaicters of licences to beg, or using the same, knowing them to be counterfaicted: all vagabound schollers of the Universities of *Saint-Andrewes, Glasgow and Abirdene*, not licenced be the Rec- tor and Deane of Facultie of the Universitie, to aske almes: all Schip-men and Mariners, alledging themselves to be schip-broken, without they have sufficient testimonialles, sall be taken, adjudged, esteemed and punished, as strang Beggarres and Vagaboundes.

Of them  
quha main-  
teines or  
receipts va-  
gabounds.

And gif ony person or persones, after the said first of Januar nixt-to-cum, gives money, harberie or ludgeing, settis houses, or shawis ony uther reliefe, to ony vagabound or strang begger, marked or to be marked, wanting an li- cence of the Provost and Baillies within Burgh, or of the Judge within that Pa- rochin: The same being dewlie provin at the Court, they sall pay sik unlaw to the use of the pure of the Parochin, as be the Judge, at the Court sall be modified, swa

Of them  
quha staves  
the execu-  
tion of this  
Act.

the same exceed not five punds. And alsua, gif any persone or persones, disturbis or lettis the execution of this Act ony maner of wayes, or makis impediment against the Judges and ordinarie officers, or uthers persones, travelling for the dew Exe-

cution heirof, they sall incur the same paine quhilk the vagabound suld have incurred, in case he had bene convict. Providing alwayes that schip-men and soul-Of soldiers  
diours, landing in this Realme, have licence of the Provest or Baillie of the Towne, and schip-  
or Judge in the Parochin, quhair they war schippe-broken, or first entred in the men.  
Realme, sall, and may passe, according to the effect of their licences, to the rowmes  
quhair they intend to remayne. And that the licences onelie serve, in the juris-Searchers  
diction of the giver; Sa that gif the person travelling hame, have farther journey, of vaga-  
he procure the like licences of the Judge of the nixt Parochin or Town, throw bounds.  
quhilk he mon passe, and sa fra Parochin to Parochin, quhill he be at his resting  
place. And that there be certaine persones, ane or maa nominate, in everie Burgh  
and Parochin, be the officers and Judge thereof, for searching, receiving, & con-  
voying of the vagaboundes to the commoun prison, Irones or stokkes, upon the  
commoun charges of the Parochin. Quhilkes persones sa elected, sall be halden  
to do their dewtie diligentlie, as the saidis Judges will answeare thereupon. And  
seeing charitie wald, that the pure aged, and impotent persones, suld be als neces-  
sairlie provided, as the vagaboundes and strang beggars repressed, & that the aged,  
impotent, and pure people, suld have ludgeing and abiding places, throughout the  
Realme, to settle themselves intil.

IT IS therefore thocht expedient, statute and ordained, that the Lorde Chan-Reparation  
cellar, according to the direction, of sindrie lovabil Actes of Parliament heirtofor of Hospi-  
maid, sall call for the erectiones of all Hospitalles, to be produced befor him, and in-  
quire and consider, the present Estaite theirow, reducing them, sa far as is possible, tallen, for  
to the first institution, as may best serve, for the helpe and reliefe of the saidis persones.  
aged, impotent, & pure peopil. And als that the Provosts and Baillies of ilk Inquisition  
Burgh and Towne, and the Justice constitute, be the kings commission, in every suld be  
Parochin to landwart, sall betuixt & the first said day of Januar nixt-to-cum, take taken of  
inquisition of all aged pure, impotent and decayed persones, borne within that Pa- aged pure,  
rochin, or quhilkes war dwelling, and had their maist commoun resorte in the saide and impo-  
Parochin, the last seven zeires by-past, quhilkes of necessitie mon live bee almes: tent, per-  
And upon the said inquisition, sall make ane Register buike, containing their sones.  
names, and sur-names, to remaine with the Provosts and Baillies within Burgh,  
and with the Justice in everie Parochin to Land-wart: And to the effect, that the All pure  
number of the pure people of everie Parochin, may be knawin, statutis & ordainis, people suld  
that all pure peopil, within fourtie dayes after the Proclamation of this present Act, returne to  
at the mercat Croce of *Edinburgh*, repayre to the Parochin, quhair they were Parochin.  
borne, or had their maist commoun resorte or residence, the last seven zeires by- And of  
past, and there settil themselves, under the paine, to bee punished as vagaboundes, their sus-  
and contravenars of this present Proclamation: And the said space of fourtie dayes tentatioun.  
being bypast: That then, the Provosts and Baillies within Burrowes, and the  
Judge constitute, be the Kingis commission in ilk Parochin, to Land-wart, make a  
Catalogue, of the names of the saidis pure people, inquire the men and wemen,  
quhair they wer borne, quhidder they ar maryed or un-mariied, quhen, and be quhom  
they war mariied, and quhat bairnes they have, and quhair their bairnes were bap-  
tized, and to quhat forme and trade of life, they addresse them-selves, and their  
saidis bairnes: Gif they be diseased or haill, and abill in bodie, and quhat they  
get commounly on the daye, be their begging: And sik as necessairlie mon be sus-  
tained be almes, to see quhat they may be maid content of their awin consentis, to  
accept daylie to live unbeggand, and to provide quhair their remaining sall be, be  
them-selves, or in hous with others, with advise of the Parochiners, quhair the

saidis pure peopil, may be best ludged and abyde, And thereupon, according to the number, to consider quhat their neideful sustentation will extende to everie oulk : and then, be the gude discretions of the saidis Provests, Baillies and Judges in the Parochinis to Land-wart, and sik as they sall call to them to that effect, to taxe and stent the haill inhabitantes within the Parochin, according to the estimation of their substance, without exception of persones, to sik oulkie charge and contribution, as sall be thocht expedient and sufficient, to susteine the saidis pure peopil. And the Names of the inhabitants stented, togidder with their taxation, to bee likewise registrate : And that at their discretion, they appoynt overseers, and Collectors in everie Burgh, Toun and Paroche, for the haill zeir, for collecting and receiving of the said oulkie portion, quhilkes sall receive the same, & deliver sa-meikle thereof to the saidis pure peopil, and in sik maner, as the saidis Provests and Baillies within Burgh, and Judges, in the Parochin to Landwarte, *respectively*, sall ordaine and command ; And that overseeres of the saidis pure peopil, be appoynted be their discretions, to continue also for a zeir. And at the end of the zeir, that the taxation and stent Roll be alwayes maid of new, for the alteration that may be throw death, or be increas or diminution of mennes gudes and substance. And that the Provests and Baillies in Burrowes or Tounes, and the saidis Judges, in the Parochinnes to Land-wart, sall give an Testimonial to sik pure folk, as they finde not borne in their awin Parochin, or making residence therein, the last seven zeires, sending or directing them to the nixt Parochin, and sa fra Parochin to Parochin, quhill they be at the place quhair they were borne, or had their maist commoun resort and residence, during the last seven zeires preceeding ; there to be put in certaine abiding places, and sustained upon the commoun almes, and oulkie contribution, as is before ordained, except Leprous peopil, and bedfast peopil, quhilks may not be transported. Prowiding that it be leifull to the pure peopil, sa directed, to their awin abiding places, with Testimonialles to aske almes in their passage, sa as they passe the direct way, not resting twa nichtes togidder in ony an place, without occasion of seckenesse or storme impeede them.

And gif ony of the pure peopil refuse to passe and abide in the places appoynted, or after the appoyntment, be found begging, then to be punished be scourging, imprisonment, & burning throw the eare, as vagabounds and strang beggars : and for the second fault, to be punished as thieves, as is befor appoynted. And gif the persones chosen Collectoures, refuse the office, or having accepted the same, beis found negligent therein, or refusis to make their compts everie half zeir anis, at the least, to the Provests and Baillies in Burrowes, and to the saidis Judges in Land-wart, and to deliver the super-plus of that, quhilk restis in their handes, at the end of the zeir, or halfe zeir, to sik as sall be chosen Collectours of new : Then ilk-ane of the Collectours so offending, sall incur the paine of twentie punda, to the use of the pure of that Parochin, and imprisonment of their persones, during the Kingis will : For quhilkes paines, the saidis Provests, Baillies and Judges, sall poynd and distrenzie : And gif ony persones, being abill to further this charitable woork, will obstinatlie refuse to contribute to the reliefe of the pure, or discourage uthers from sa charitabil ane deede ; The obstinate or wilful person, being called befor the saidis Provests and Baillies within Burgh, or Judges in the Parochins to Landwart, and convict thereof, be ane Assise, or sufficient testimonie of twa honest and famous witnesses his nichtbours, upon the supplication of the saidis Provests, Baillies and Judges, to the Kings Majestie, and his privie Council : the obstinate and wilful person or persones, sall be commanded to waird in sik pairt

Collectors  
for almes.

Over-seers.

The stent  
Roll.

Testimoni-  
alles to bee  
given to  
the pure.

Of the pure  
refusand to  
returne to  
their awin  
Parochin.  
Collectors.

Of them  
quharefusis  
to contri-  
bute to the  
help of the  
pure.

as his hienes, and his Councel sall appoynt, and there remaine, quhill he be content with the ordour of his said Paroch, and performe the same in deede; And gif the aged and impotent persones, not being sa diseased, lamed or impotent, bot <sup>Of the pure</sup> that they may woork in sum maner of wark, sall be bee the overseers in ony Burgh <sup>refusand to</sup> or parochin, appoynted to wark, and zit refusis the same: Then first the refuser <sup>woorke.</sup> to be scourged, and put in the stokkes: and for the second fault, to be punished as vagabounds, as said is. And gif any beggers bairne, being above the age of five <sup>Of beggeris</sup> zeires, and within fourteene, male or female, sall be liked of, be ony subject of the <sup>bairnes.</sup> Realme of honest estait: The said person, sall have the bairne, be ordoure and direction of the saids Provests and Baillies within Burgh, or Judge in every Parochin to Land-wart. Gif he be a man-child to the age of xxiv. zeires, and gif sche be a woman child, to the age of xviii. zeires, and gif they depart, or be taken or intised from their Maister or Maistresse service, the Maister or Maistresse, to have the like action and remedie, as for their hired servand or prentises, alsweil against the bairne, as against the taker, and intiser thereof. And quhair collecting of <sup>Collection</sup> money may not be had, and that it is over great ane burding to the Collectours, <sup>of victual-</sup> to gadder victualles, meat and drink, or uthir things for reliefe of the pure in sum <sup>les, meat</sup> Parochines; That the Provest and Baillies, in Burrowes, and the saidis Judges, <sup>& drinke.</sup> in the Parochines to Land-wart, be advise of certaine of the maist honest Parochiners, give licence under their handwrits to sik, and sa many of the saidis pure people, or sik uthers of them, as they sall think gude, to aske and gadder the charitable almes, of the Parochiners, at their awin houses. Sa as alwayes, it bee speedely appoynted and agried, how the pure of that Parochin, sall be susteined within the same, and not to be chargeable to uthers, nor troublesome to strangers. And seeing be reason of this present act and ordour, the commoun prisoners, <sup>Expensers</sup> irones <sup>of prison-</sup> and stokkes of everie head Burgh of the Schire, and uthers Townes, ar like to be <sup>ers.</sup> filled, with ane greater number of prisoners, nor of befoir hes bene accustomat, in sa far, as the saidis vagaboundes, and uthers offendours, ar to be committed to the commoun prison of the Schire or towne, quhair they were taken, the same prisoners being in sik townes, quhair there is great number of pure peopil, mair nor they ar weill abill to susteine and relieve: And sa the Prisoners ar like to perish in default of sustenance: Therefoir the expenses of the prisoner, sall be payed be a pairt of the commoun contributions, and oukly almes of the Parochin, quhair he or sche was apprehended, allowand to ilk person daily ane punde of Ait breade, and water to drink. For payment quhair of, the presenter of him to prison, sall give <sup>Execution</sup> sovertie, or make present payment. And that the Schireffes, Stewardes and Bail- <sup>of this act.</sup> lies of Regalities, and their Baillies over all the Realme, and their deputes, see this present act, put to dew execution in all poyntes, within their jurisdictions *respectively*, as they will answer to God, and our Sovereine Lord thereupon. And quhat ever doubt or ambiguitie sall happen to arise upon this present Act, or ony pairt thereof: OUR Sovereine Lord, with advise of his saidis three Estaites, committis the <sup>Interpreta-</sup> interpretation, explanation suppliement and full execution thereof, to his Majestie <sup>tion of this</sup> with advise of his privie Council.<sup>106</sup> <sup>act.</sup>

<sup>106</sup> This act is the foundation of the Scottish system of poor-laws, and is, to this day, the only authority (with the exception of a proclamation of the Privy Council, 11th Aug. 1692), for enforcing a compulsory provision for the support of the ordinary poor. For full information on this subject, see Dunlop on Parochial Law, p. 317, *et seq.* and App.; also Lord Pitmilley's Treatise on Poor-Laws.

The previous acts relating to the poor and a provision for them, and as to the restraining

13. *For punishment of persones, that contemnantly remaynes rebelles and at the Kings Horne.*

Forsameikle, as the contempt of our Sovereine Lordis authoritie, and of the Lawes and ordinar Justice of the Realme, is the ground and fountaine fra quhilk, the maist part of all confusion and disordour proceedis, and amangs uthers evilles, the disobedience of the processe of horning is sa great and commoun, that the persones denounced rebelles, takes na feare theirow, & the parties hurtand in their interest, that hes obtained decretes and letters, with their infinite expenses & coaste, can get na execution nor redresse. And howbeit, be an Acte and ordinance, maid be the Lordes of Session, It was provided, that all Officers, immediately after their denuntiation of ony persones to the horne, suld passe to the Schireffe of the Schire, quhair they dwelt, and intimate to him the same, requiring him in our Sovereine Lordis name and authoritie, to make ane just inventure of all the saidis persones gudes, to the effect, that the samin might be inbrocht to his hienesse use, for their contempt: And that the saidis Officers, suld deliver to the saide Schireffe ane authentick copie of the saidis letters, with the execution of the same, subscribed with their hand, and within aucht dayes thereafter, suld pass to the Thesaurer or his Clerkes, & deliver to them ane uther cople of the saidis letters, with the execution of the same, in like manner subscribed, with the saidis Officers handis, to the effect foirsaid, conforme to the said Act and ordinance. Neverthelesse the samin hes been neglected of the maist pairt, and na wise followed be the saidis Officers; Swa that the impunitie of sik heynous attemptates, and open Rebellion, hes brocht our Sovereine Lordis authoritie in contempt, and maid the multitude of rebelles sa great, that it sall be difficil to know them fra the Kings obedient subjectes, without sum haistie remeede be provided. Notwithstanding, that be the foirsaid ordinance of the Lordes of Session, and uthers lovabil Lawes and acts of Parliament, established be his Hienes, and his maist Noble progenitors gude ordour be taken for avoyding of the said confusion: zit the negligence of the dew execution theirow, hes bred this great inconvenient. Quhilk now our Sovereine Lord, for the furtherance of his obedience, and universal weill of his subjects, presently intends, as God sall grant opportunitie, to remeid. Theirfoir his Hienes, with advise of his three Estaites, in this present Parliament, statutis and ordainis, that all letters of horning, execute and indorsat, or that sall happen to be execute and indorsat, befor the publication of this present act, sall within the space of fiftene dayes, after the publication theirow, and in all time thereafter, within the space of fiftene dayes, after the denuntiation, be brocht to the Schireffe-Clerk of everie Schirefdome, quha sall registrate the same, in the Schireffes buikes, and deliver the principal letters againe execute and indorsat, and noted on the back, registrate sik a day, and subscribed with his hand, within twenty foure houres, after the receipt theirow, and sall receive fra the partie awner and presenter of the saidis letters, for his labourers only sex schillings aucht pennies.

The quhilkes letters and executions theirow, swa registrate & subscribed on the back, be the said Schireffe-Clerk, or the copie theirow authenticklie extracted fourth

Letters of  
horning  
suld be re-  
gistrat.

of sturdy beggars, are 1424, 26th May, ch. 7; 1424, 12th March, ch. 21; 1427, March 1. ch. 4 and 8; 1449, ch. 9; 1455, 4th August, ch. 8; 1455, 13th October, ch. 13; 1457, ch. 17 and 26; 1478, 1st June, ch. 10; 1503, ch. 13; 1535, ch. 29; 1551, ch. 16. For these acts, see Thomson's folio edit. of Scots Acts, vol. ii.

of the said Schireffe buikes, subscribed be the said Schireffe and Clerk, sall be esteemed as authentick, & sall have effect & force in quhat-sumever Judgement they happen to bee produced, ay and quhil the partie swa denounced to the horne, obtaine himself ordourlie relaxed theirfra: Quhilk relaxation, sall alsua be maid publicklye, at the mercat Croce of the Schire quhair he dwells, and quhair the denuntiation of horning was maid: and that the said relaxation, & execution theirof, <sup>Relaxation</sup> sall be like-wise registrate in the said Schireffes buikes, within xv. dayes after the <sup>suld be Re-</sup> publication thereof, at the mercat Croce, and be alsua registrate and subscribed on <sup>gistrat.</sup> the back, in maner foirsaid, utherwise the saidis letters of horning & relaxations, sall na wise bee halden lauchfullie and ordourlie execute, bot the executiones their- of null. And that all Schireffes have honest famous men to their Clerkes, quha Schireffe- be themselves, or their sufficient deputes, sall be halden, to be alwaies resident, <sup>Clerkes.</sup> within the head Burgh of the Schire, for receiving and registering of the saidis hornings and relaxationes, as they sall occur, and sall do the same trewlye and ordourlye, within xxiiij. houres, under the paine of payment of the damage and interest, that the partie skaithed happinnis to susteine in their default, at the sight and modification of the Lordes of Councel and Session: And that ilk Schireffe, <sup>The names</sup> cause the names of: all the persones, swa denounced and remayning in his register, <sup>of the Re-</sup> to be openly published and proclaymed, at the mercat Croce of the heade Burgh of <sup>belis suld</sup> the Schire upon the mercat dayes, preceeding the three head Courtes zeirlye, <sup>be publish-</sup> and affixe the catalogue of their names, baith on the mercat Croce, and in the Tol- buith, that gif ony of them hes action to persew, they may be repelled *ab agendo*, and na wayes to be delete furth of the said Catalogue, quhil they be lauchfullie & dewlie relaxed fra the horne. And that every Schireffe, within the space of xv. dayes, after the heade Court, send the Catalogue of the Names of the saids Re- <sup>And give</sup> belles, registrate in his buikes, and ane briefe note of the causes, for quhilk they ar <sup>to the The-</sup> denounced, to our Sovereine Lordis Thesaurer, or his Clerk, quha sall be halden <sup>saaurer.</sup> with all diligence to raise letters, and cause uptake the escheittes of the rebelles, to <sup>Escheit</sup> our Sovereine Lords use. And quhen our Sovereine Lords Comptroller, Collec- <sup>suld be</sup> tour general, or ony uther person, presents letters of horning, dewlie execute and <sup>taken up be</sup> indorsat, to the said Lord Thesaurer, or his Clerk for special summes of money or <sup>the The-</sup> debt: The Thesaurer sall cause raise letters thereupon, at his instance, for up- taking of the escheit, direct outhir to the Schireffe of the Schire, or his deputes, or to Officiars of Armes, as it may best serve, be advise of the complener, of the readiest and first ende of the quhilk escheit, the partie complener, sall be payed of his just debt, with the officiars expenses, & the super-plus of the said escheit, to be brochte, in to his Majesties Thesaurer, within the space of ane moneth there- after. Providing that the partie complener, and presenter of the letters, to the Thesaurer, make the first expenses upon the Schireffe or Officiar, that sall be di- rected, for uptaking of the saidis escheit gudes, quhil the escheit selfe, may releve the saidis expenses, and then the same to be tane, and allowed of the escheit. And <sup>Deforce-</sup> in case the officiar direct for uptaking of the said eschiet, beis violently deforced & <sup>ment of the</sup> stopped in execution of his office, then upon the complaint of the said Lord The- <sup>Officiar.</sup> saurer, or of the officiar or partie, that wants payment of his debt, letters sall be direct, be deliverance of the Lordes of Councel, chargeing the Schireffe of the Schire, & his deputies: Or gif it be understand, that the Schireffe will not, or may not, chargeing sum of the Nobil men, Barronnes, Gentle-men of gude power within the Schirefdome, best affected to the furth setting of our Sovereine Lords authority & justice, to convocate his hienes lieges in weir-like maner, & to passe & concur with

The creditor is preferred to the King.

the said Officiar, that befor was deforced and stopped, & see the command of the letters execute reallie, and with effect, befor they depart off the ground, quhair the saids escheit gudis remainis : In the quhilk execution, they sall have all freedoms, priviledges, & immunities, that ar granted be the Lawes of this Realme, to sik persones as persewis the Kings rebelles, to bring them to his Lawes. Providing that this acte, nor nathing therein contened, be prejudicial to the Lordes of Regalities, or their Baillies, bot they to use & bruik their richt & priviledges, baith in execution of letters, & in uptaking of escheits, as they micht have done, befor the making of this present act. And howsoever the escheit be uptaken, upon horning execute, for summes of money, quhiddir be the Schireffes, and uthers ordinar Judges, be their awin autoritie, or at command of our Sovereine Lordis letters, that alwaies the partie complener, be first satisfied of the just debt, with the Officiars expenses.<sup>107</sup>

16. *Against sik as troubles their Nichtboures, be criminal persute sake-les.*

Forsameikle, as sindrie persones of meere malice and envie, calumniatis innocent persones, & daylie persewis them befor the justice, upon paines criminal, quhair of the persones accused being innocent, ar acquite and maid cleane be the Assise. And likewise sindrie persones, that outhir in their awin Names, or be the Kingis Advocates upon their information, raisis criminal letteris and summondis Assises, from the far partes of this Realme, oft times usis to passe fra the persute of the letteris at the Bar, to the great prejudice of our SOVERAINE LORD, and troubil of his hienes lieges. For remeede quhair of, our Sovereine Lord with advise of his three Estaites of this present Parliament statutis and ordainis, That the saidis injust perseweris sall pay the paines and unlaw *Respective* following, in case the persones accused happennis to bee acquite of the crymes, layde to their charge, to be equally divided betuixt OUR SOVERAINE LORD and the partie acquite. That is to say, gif the partie acquite be onlie ane person or maa, of, or within the number of ten, the summe of ten pundes, and gif the number acquite bee past the number of ten, the summe of twentie pundis, & that doome be given theirupon befor the Justice, without farther calling, and the persewer halden in waird, quhil he make payment. And gif the Kingis Majesties Advocat be onlie persewer, his informer to pay the paine fairsaid, And letteris of pointing or horning to be direct, for payment thei of, upon the act of Adjornal without uther calling or Proces in Law. And that in tyme cumming, the Justice Clerke and his deputes, at the granting of letteris, take sovertie for againe-bringing of the letteris dewlie execute and indorsat, and that the raiseris thei of, sall persew the samin letteris at the day appoynted, under the paine contened in the acts of Parliament.<sup>108</sup>

<sup>107</sup> This act contains the original constitution of a register of hornings in the Sheriff-Court books. Registration in the General Register at Edinburgh is rendered competent by 1600, c. 22. In reference to these acts, see Erskine, b. ii. tit. v. § 55, *et seq.*

The greater part of this act was superseded by 20th Geo. II. ch. 50, which abolished escheat in respect of denunciation for a civil cause.

<sup>108</sup> The penalties here mentioned have become elusory in the present day. Immediate decree may be given for them against an unjust and malicious private prosecutor in the event of an acquittal, and they may be recovered by summary imprisonment of the prosecutor. By 1587, ch. 57, § 7, judges are directed to modify to the accused the expenses incurred in his defence, "where he is maliciously charged to underlie the law." Farther,

18. *Anent the subscription and inserting of Witnesses in Obligationes, and utheris writtes of importance.*

ITEM, It is statute and ordained be our Soveraine Lord, with advise of his three Estaites in Parliament, that all Contractes, Obligationes, Reversiones, Assignationes and discharges of Reversiones, or eikes theirto, and generallie all writtes importing heritabil titil, or utheris bandes and Obligationes of great importance to be maid in time cumming, sall be subscribed and seilled, be the principal parties, gif they can subscribe, urtherwise be twa famous Notars befor four famous witnesses, denominat be their special dwelling places, or sum uther evident takens, that the witnesses may be knawen, being present at that time, urtherwise the saidis writs to make na faith.<sup>109</sup>

19. *Prescription in causes of spuilzies and Ejectiones.*

ITEM, It is statute and ordained be OUR SOVERAINE LORD, with advise of his three Estaites in Parliament, that all actiones or spuilzies, Ejectiones and utheris of that nature be persewed befor the Ordinar Judge, within three zeires after the committing theirow, urtherwise the perseweris alledged hurt, never to be heard thereafter. Providing that this Act extend not to Minours, bot to persew within three zeires after their perfite age.<sup>110</sup>

20. *Prescription in causes of Remooving.*

ITEM, It is statute and ordained be our Soveraine Lord, with advise of his three Estaites in Parliament, that all actions of Remooving be persewed within three zeiris after the warning, with certification & they failzie, the warneris sall never be heard there-after to persew the samin upon that warning.<sup>111</sup>

21. *Prescription in certaine causes of debt.*

ITEM, It is statute & ordained be our Soveraine Lord, with advise of his three Estaites in Parliament, that all actiones of debt, for house-mailles, mennis ordinars, servands fees, Merchantes comptes, & uther the like debts, that are not founded upon written Obligationes, be persewed within three zeires, urtherwise the

the Court are authorized to award a sum of money *de plano* in name of *solatium*, and as a reparation to the accused for his damage and distress. See Hume, vol. ii. p. 127, *et seq.*; Burnet, p. 305-6; and Alison's Practice, p. 113, 114.

In the case of a public prosecutor, he may be compelled to disclose the name of his informer to the party unjustly and maliciously accused. See Hume, vol. ii. p. 135; Burnet, p. 313; and Alison's Practice, p. 94, *et seq.*

The Lord Advocate and his Deputes are not personally liable for penalties, expenses, &c., but inferior public prosecutors, as procurators-fiscal, have been repeatedly found liable in cases where the proceedings were grossly irregular or savoured of official oppression. See Hume, vol. ii. p. 134-5; and Alison's Practice, p. 92-3.

<sup>109</sup> This act is in force except in regard to the use of seals, which was abolished by 1584, ch. 11, in the case of deeds which contain a clause of registration; and soon afterwards the use of seals was laid aside altogether. See Erskine, b. iii. tit. ii. § 7.

The subject of this act is more fully regulated by 1681, c. 5.

<sup>110</sup> This act was ratified and made perpetual by 1581, c. 25, and is still in force. See Erskine, b. iii. tit. vii. § 16 for a commentary.

<sup>111</sup> In reference to this act, see Erskine, b. iii. tit. vii. § 18.



creditour sall have na action, except he outhier preise be writ, or be aith of his partie.<sup>112</sup>

*22. Against the destroyers of planting, haning and policie.*

**FORSAMEIKIL** As there is sindrie lovabil & gude Acts, maid be our Sovereine Lord, & his maist Nobil Progenitouris, specially be his hienes Gudschir King *James* the Fift, of gude memory, anent planting of Wooddes, Forrestes and Orchardes, sawing of Broome, against the destroyers theirof, breakeris of Dowcattes, Cunningaires, Parkes, stankes, zairdes, slaying of Haires, makeris of Mureburne in forbidden time, and sindrielike uther thingis, for punishment of the destroyers of planting, haning and policie. Quhilks Acts, our said Sovereine Lord, with advise of his three Estaites in this present Parliament, ratifies, appreis and confirmis, and ordainis them to have effect and execution in time cumming, not only upon the contraveners theirof, bot alsua upon the destroyers and stealeris of Bees, and cutteris and pulleris of Broome, with this addition, that quhat-sumever person stealis, pealis, and destroyis green-wood, pullis or cuttis haned Broome, breakis zairdis, or Orchardes, without the gude will of the awner: That the offender being taken reid hand, may be persewed, and put to the knowledge of ane Assise, befor the Barron or Landeslord of the land or ground, quhiddir the offender be his tennent, unto quhom the wrang is done or not, within three dayes after the apprehension: And uthers not taken reid hand, to be alwaies persewed befor the Schireffe, Steward, or Baillie, within quhais boundes and jurisdiction the wrang doer dwellis. And gif he that receivis the wrang and hurt, be Schireffe, Steward, or Baillie himselfe, then the wrang doer, to be persewed befor the unsuspect depute of the saidis Schireffe, Baillie or Steward, receivand the wrang. And for the first fault, being convict, be his awin confession or witesse, sall pay to the awner of wood, broome or zaird, the avail of the skaith done, togidder with ten pundes. For the second fault, sall pay to the said awner twentie pundes, with the avail of it that is destroyed. And for the thrid fault, sall pay to the said awner, fourtie pundes, and the avail of it that is skaithed. And fra thine foorth, sa oft as the offender failziez theirafter, the said thrid penaltie to be payed to the awner of the Wood, broome or zairdes. Bot in case of the committer of the wrang be unresponsal, he sall for the first fault be put in the stokkes, prison, or irones aucht dayes, on bread and water: And for the second fault, fiteene dayes; and for the third fault, ane moneth to lye in the stokkes, as said is, and to be scourged at the end of the said Moneth: And this but prejudice, to be called at justice courts, at our Sovereine Lords instance, conforme to the former use and auld Actes. And that the paines for breaking of Dowcattes, Cunningaires & Parkes, be according to this present Act and addition abone written. And in case the offendours be not responsal in gudes, for the saidis paines, for the first fault to be punished, as is abone written, for the second fault the paine likewise abone expressed, and for the third fault hanging to the death.<sup>113</sup>

<sup>112</sup> This act is of great importance in practice, by establishing the triennial prescription of open accounts, which is so frequently pleaded. In reference to it, see Erskine, b. iii. tit. vii. § 17; and Bell's Commentaries vol. i. p. 331.

<sup>113</sup> This act appears to be in force, with the following exceptions: 1. Persons apprehended in the act, or "taken redhand," as it is here called, are, by modern practice, tried according to the rules observed in other cases: 2. The criminal jurisdiction of Barons is now limited by 20th Geo. II. c. 43, to assaults, batteries, and smaller offences, punishable

26. *For punishment of Regraters and Fore-stallers.*

ITEM, Our Soveraine Lord, and the three Estaites of Parliament, hes ratified and appproved, and be this Act, ratifies and appreis, all Actes and constitutions, maid be his hienes maist Noble Progenitours, in time by-gane, speciallie the Actes maid be umquhile his hienes dearest Gudschir, King *James* the fifth, of worthie memorie: Anent Foirstallers and regraters of victualles, flesch, pultrie, and uthers rivers, cumand to Mercattes. And makis and constitutis, the Provests, Alder-men, and Baillies of all his hienesse Burrowes, his Majesties Justices for execution of the saidis Actes, within the bounds of their awin freedoms and jurisdictions, and to up-take the paines contained therein, to be applyed after the forme and tenour theirof.<sup>114</sup>

27. *Anent the destruction of Cruves and Zaires, slauchter of reid fisch and Smoltes, be wandes or uthewise.*

ITEM, Our Soveraine Lord, and the three Estaites of Parliament, considering the hurt, that hes cummin to the commoun-weill of this Realme, and lieges their-of, be having and keeping of Cruves and zaires, slauchter of reid fische, in forbidden time, and Smoltes: And that divers actes and constitutions hes beene maid, be his Hienes maist noble progenitours, in time by-gane, toward the destruction and away taking of the saidis cruves and zaires, and eschewing of slaying of reid fische and Smoltes. Quhilkes hes not received dew execution in time by-gane, bot hes bene neglected and overseene.

THEREFORE Ordainis the saidis actes to be extended, and have effect and execution in time cumming, against the transgressours thereof, after the forme and tenour of the same: As alsua against the slayers of the saidis reid fisch, in forbidden time, be blesis, casting of wandes or uthewise: or that destroyes the Smoltes and frye of Salmound in mil-dammes, or be Polkes, Creilles, Trammel-nets, & Herrie-waters: And that the Landes-lord, and awners of the saidis Cruves and zaires, betuixt & the first day of March nixt-to-cum, put down, and hald doun the saidis cruves and zaires, conforme to the saidis Actes, and under the paines contained therein: And gif they failzie therein, the said day being by-past, ordainis and commandis his Hienes Thesaurer, to persew and up-take the saidis paines: And als ordainis the Schireffes, Stewardes, and Baillies in the Schires, and Lordes of Regalities, quhair the saidis cruves and zaires ar, and the Provestes and Bailies of the nixt Burrowes conjunctlie and severallie, to pass with convocation of his Majesties lieges, to cast doun and destroy the saidis cruves and zaires, and hald them doun, as they will answer to our Soveraine Lord, upon their obedience. And gif neede be, that letters be direct against them, to that effect, within ten dayis, under the paine of Rebellion, and gif they failzie, to put them to the horne. And this act to serve for sufficient commission to the saidis Schireffes, Stewardes, Bailies, Lordes of Regalities, Provestes, Alder-men, and Baillies of Burrowes, to the

by fine not exceeding 20s., and is seldom or never exercised in practice. See Bell's Law Dict. and Dig. Art. "Baron."

In reference to this act, see Hume, vol. i. p. 79 and 82. Erskine, b. i. tit. ii. § 26, & Erskine's Princ. b. i. tit. ii. § 13.

<sup>114</sup> Forestalling and regrating are defined by 1592, ch. 70, which see, and Hume, vol. i. p. 510, *et seq.*, from which it may almost be inferred, that forestalling and regrating are not now cognisable offences.

effect foirsaid : And that they na waies sall be called nor accused theirfoir nor incur ony skaith or danger therethrow in time cumming : And commanding all our Soveraine Lordis lieges, to rise, concur and assist to thesaidis Schireffes, Stewardes, Baillies, and their deputes, Provestes, Aldermen, and Baillies of Burrowes, and their Officers, in putting the said Act to execution in all poynts, after the tenour theirrof. And for punischment of the slayers of reid fische, in forbidden time, be blesis, casting of wandes, or uthewise : or destroyers of the Smoltes, and frye of Salmound in Mil-dammes, or be Polkes, Creilles, Trammel-nettes and Herrie-waters, that the Schireffes, Stewardes, Baillies, and Lordes of Regalities, within their awin jurisdictions, proceede as ordinar Justices, and uptak and execute the paines and escheittes, the twa pairt to the Kingis Majesties use, and the thrid to themselves, for their travelles. And quhair the offenders hes na geir worth the paines, to put & hald them in prison, stockkes, or irones, for the space of ane moneth, upon their awin expenses, or gif they have it not, on bread and wáter.<sup>115</sup>

*37. Anent the admission of privie writings, charges and commands be the Lordes of Session.*

ANENT The supplication given to our Soveraine Lorde and the three Estaitis of Parliament, be the Chancellor, President and remanent Senatoures of the Colledge of Justice, makand mention : That quhair be the Institution of the said Colledge, they ar authorized to sit, and decide upon all actions Civile, and nane uthers to have vote with them : And our said Soveraine Lordis dearest Gudschir, King JAMES the fifth of worthie memorie, instituter of the said Colledge, promitted in the said institution theirrof : That hee suld not be ony privie writing, charge or command (at the instance of ony persones) desire them, to do utherwayes in ony matter that suld cum befoir them, bot as Justice required, or to do ony thing that maie break the statutes, maid be their Predecessoures, the first Senatoures of the saidis Colledge, at his Hienes commaund, in doing of Justice. And that he wald give na credite to ony man that wald murmure the saidis Lordis, or ony of them, be doing of wrang and unonestie, bot they suld be called befoir him, and gif they were foundin culpabil, to be punished therefoir, after the qualitie of the fault or demerite : And gif they were foundin cleane and innocent, The persones compleining to be punished with all rigour, and never to have credite againe with his Hienes, as in the said Institution, ratified be Parliament, at mair length is contained. Nevertheles within thir fewe zeiris bypast, our Soveraine Lordis Authoritie & their Jurisdiction, is greatly troubled and called in doubt, be reason of sindrie privie writings & charges direct against them, be our said Soveraine Lord and his privie Council, sumtime to forbear to proceede in Civil causes, befoir the intending thereof, sumtime to stay the proces, and remit the matter to the Parliament, quhilk sendle haldis, & theirthrow divers parties are oftymes frustrate and delayed of Justice, and sumtimes after the decreetes given, the execution theirrof stopped, as sindrie of the number of the said Colledge, awayting on the said Lordes of Artickles, can specially declair. Quhilk as it tendis to their discrediting, swa it bringis contempt to our Soveraine Lordis Authoritie, and castis the parties, havand their causes in proces (to quhom Justice suld alwayes be patent) in great doubt, quhen they finde not ane out-gait, to have their causes decided quhair they are intended. And the

<sup>115</sup> This act was ratified by 1696, ch. 35 ; see note annexed to act 12 of 1st Parliament of James First in 1424.

Kings Majestie, his Parliament, and privie Councel, sall have little time and opportunitie, to consider his Hienes awin affaires, and the causes of the Commounweil, gif that at the in-opportune sute of private parties, the civile causes ordourly belonging to the Judgement of the Colledge of Justice, sall be brocht before them.

THEREFOIR, our Sovereine Lord, with advise of his three Estaites of this present Parliament, hes declaired, decerned, and ordained, like as they be the tenour hereof decernis, declaris, and ordainis, the saidis Lordis of Councel and Session, to proceede in all the said Civile causes intended and depending befor them, or to be intended, and to cause execute their decreetes, alreddie given, or to be given, notwithstanding ony private writing, charge or command, at the instance of ony persone or persones, direct, or to be direct in the contrair.

38. *Anent the admission of the ordinar Lordes of the Session, and Reformation of certain abuses therein.*

FOR-sameikle, as it is heavilie murmured be divers Lieges of this Realme; that our Sovereine Lord electis and chusis zoung men, without gravitie, knowledge and experience, not havand sufficient living of their awin, upon the Session, and that sum of them be themselves, their wives, or servands, takis buddes, bribes, gudes and geir, swa that Justice in effect is coft and sauld. FOR remeid quhairof, the Kingis Majestie, with advise of the three Estaites of this present Parliament, statutis and ordainis, That nane of the Lordes of Session alreddie received, or to be received, nouthir be themselves, or be their wives, or servands, take in ony times cumming bud, bribe, gudes or geir, fra quhatsumever person or persones presently havand, or that hereafter sall happen to have ony actions or causes persewed before them, outhir fra the persewer or defender, under the paine of confiscation of all their movabil gudis, that dois in the contrair, the ane halfe thereof to be applied to our Sovereine Lord, and the uthir halfe to the reveiler and tryer of the saidis Bud-takeris. And farther decernis and ordainis the saidis Bud-takeris, to be displaced and deprived *simpliciter* of their offices, quhilk they beare in the Colledge of Justice, and to be declared infamous, and als to be punished in their persones, at the Kingis Majesties will. And siklike our said Sovereine Lord, with advise foirsaid, hes declaired and declaris, that in all times cumming, quhen any ordinar place vakis in the Session, that our said Sovereine Lord, sall present and nominate theirto ane man that fearis GOD, of gude literature, practick, judgement, and understanding of the Lawes, of gude fame, havand sufficient living of his awin, and quha can make gude expedition and dispatch of matters, tuiching the Lieges of this Realme, Quha sall be first sufficientlie tryed and examine, be ane number of the saidis ordinar Lordes. And in case that persone presented be the Kingis Majestie be not founde sa qualified be them, as is befor described, our Sovereine Lord, with advise of his saidis three Estaites, declairis, that it sall be leasum to the saidis Lordes to refuse the persone presented to them. And the Kingis Majestie to present ane uthir, sa oft as he pleasis, quhill the person presented be founden qualified, for using of the said place. And siklike our said Sovereine Lord, with adviae foirsaid, hes declaired and declairis, that the President of the said Colledge of Justice, sall be chosen be the haill Senatoures their of, of the conditions and qualities abone written, quhidder he be of the Spiritual or Temporal estaite. For chusing and electing of quhome, the Kingis Hienes and Estaites foirsaidis, dispensis with that part of the first institution of the Colledge of Justice, Beirand that the President suld be of the Spiritual estaite, and ane Prelate con-

after: Decernis and declaris the giftes and dispositiones to be null, and of nane avail, force nor effect.

7. *The Explanation of the Act, twitching the notour and manifest committeris of Adulterie.*

ANENT the Supplication, maid to the Kingis Majestie, and his three Estaites of this present Parliament, craving ane explanation of the Act of Parliament, maid in the Reigne of the Queene, his Hienes dearest Mother, Anent Adulterie. That is: Quhat sall be esteemed and judged in Law to be notour & manifest Adulterie, woorthie of the paine of death, mentionate in the said Act. IT IS theirfoir declared be his Hienes, with advise of his three Estaites in this present Parliament: That it sall be judged in Law notour and manifest Adulterie, woorthie of the said paine of death, quhair there is bairnis, ane or maa, procreat betuixt the persons Adulterers, or quhen they keepe company and bed togidder notoriouslie knawen, or quhen they are suspect of Adulterie, and thereby gives sclander to the Kirk, quhair-upon, being dewlie admonished, to absteine and satisfie the Kirk be Repentance, or purgation, and zit contemptuandlie refusand, are excommunicate for their obstinacie. All thir three degrees of Adulterers, and every ane of them, being lauchfully called and convict befor the Justice and his Deputes, sall incurre and suffer the said paine of death.<sup>119</sup>

14. *Against the shameful oppression of slaying and houching of Oxen, Horses, and uther Cattel.*

FORSAMEIKLE, as be the lovabil Lawes and Actes of Parliament maid of befor, sik special respect is had to the labouring of the ground in dewe season, as the Oxen and Cattel occupied in the Pleuch, are forbidden to be poynded for any maner of debt, during the time of the Tilt. Zit sindrie wicked persones, mooved in despite against their Nichtboures, ceasses not commonlie in their private revenge, to houch and slay Oxen and Horses in the Pleuch, Byre, and utherwaies, And to hound out bair-men and vagabounds, to the attempting of sik foull and shameful enormities, sa farre prejudicial to the Commoun-weill, and against all gude example. For stancheing quhair of in time cumming, and to the terrour alsweil of the committeris of sik foull and shameful oppresiones, as of the causeris, fortifieris, and receipteris of the committeris their of: IT IS statute and ordained be OUR SOVERAINE LORD, with advise of the three Estaites of this present Parliament: That all sik slayeris and houcheris of Horses and Oxen, or uther Cattel in time cumming, sall be esteemed and punished as thieves. And all persones that sall happen to receive, supplie, and maintaine the Authores of sik oppression in companie or houshald, after the committing their of, sall be esteemed and punished as receipteris and maintaineris of thieves, And baith the committeris of the said unwoorthie and shameful oppression, and the receipteris, supplieris & maintaineris of them, being dewlie called and convict their of, to incurre the paine of death, and confiscation of all their gudes moovabil.<sup>120-121</sup>

<sup>119</sup> This act was ratified and ordained to be put to execution by 1700, ch. 12. See Hume, vol. i. p. 454, *et seq.*

<sup>120</sup> See Hume, vol. i. p. 124-5.

<sup>121</sup> The following act appears in Mr Thomson's edition of the Scots Acts, and in the edition of 1566, but not in the editions of 1597 and 1681.

22. *The forme and paine of Law-borrowes.*

**FORSAMEIKLE,** As sindrie gude Actes hes bene maid anent finding of Law-borrowes, for preservation of the trewe & obedient Subjectes from unjust force and

**XVII. Commissioun for Reformation to the hospitallis masondewis, almoushouses and beidhouse, and reducing thame to thair first institution.**

" Anent the Supplicatioun presentit be our Souerane Lord and thre estatis of this present parliament, be the puir pepill of this his hines realme Makand mentiou that quhair " his majesteis maist nobill progenitouris of worthie memorie vpoun ane godlie zeale quhillk " thai and the baronis and othis of this realme, thair guid subjectis hes borne to the re- " leif of the aiged and decayit honest folkis, foundit and erectit certane hospittallis, masoun- " dewis, almoushouses, and beidhouses to the glorie of Almytie God, and relief of the pure " and hes continuallie mantenit the Samyn till of lait dayis. That the present possessouris " of Sindrie benefices vnder coulour of reformatioun of the religioun hes appropriat the haill " levingis of the saidis hospitallis masondewis almoushouses, and beidhouses to thair awin " vases and thair airis, or hes Sauld the landis and rentis thair of for greit Sowmes of money " to vtheris in few firme, and further hes dimolischit the godlie housse that was appoyntit for " resaving and ludging of the pure, and applyit the samyn to thair awn particular vases " mynding that never sic thing sal be in tyme cufing, to the greit offence of Almyte God, " the defraud of our Souerane Lord and his posteritie Kingis of this realme, and thair " subjectis the foundatouris, and to the extreme vndoing of greit nu'beris of the puir pepill " that wer and aucht to be sustenit thairby gif his hines foirsie not the samin, and put not " timous remeid thairto. Ane deid assuritie that in na pairt of Christindome, ye not " amangis the verie turkis wald be sufferit. And albeit his majestie with aduise of his " estatis in parliament appointit the Chancellor and certane vtheris to consider the foun- " dationis of the saidis hospitallis masondewis, almoushouses, and beidhouses and ordanit " the same be act of parliament to be reformat, according to the godlie institutionis and " erectionis of thame, yit is thair nathing done thairin, quhowbeit the exceding nu'beris " of the puir that daylie increissis in this land, cryis vnto Almychtie God for reformatioun " thair of, and maist humlie seikis the same of his hienes, to quhome God hes onlie gevin " the pouer, quhairfoir our Souerane Lord and thre estatis of this present parliament hes " gevin, and grantit like as thai be the tenoure hereof gevis and grantis power and comis- " soun, to Coline, Erle of Ergyle, Lord Campbell & the lorne Chancellair, Williame Erle " of Gowrie, Lord Ruthuen, thesaurair, Johnne Lord Hereis, Robert Comendatoure of " Dumfermling mark comendatour of Newbottill Alexander Comendatour of Culross " Maister Robert Crechtoun of Eliok his hines aduocat, Alexander Hay Clerk of Register, " and Alexander Clerk Provost of Edinburgh, or onie thre of thaim councilie to convene " thame selfis and sit in the tolbuyt of Edinburgh, quhatsumever day or dayis, alsweill " after none as befoir for taking cognitioun in the said mater ay and quhill the saidis hos- " pitallis masondewis almoushouses, and beidhouses within this realme be brocht, reponit " and redncit in and to the ordoure and estait of thair first foundationis, according to the " mynd and intention of their godlie foundatoris, safer as may stand aggreahill with the " lawes of this realme and christiane religioun presentlie professit within the same and " to that effect that our Souerane Lordis letteris be directit vpoun the warrandis and de- " lyverance of the saidis comissioneris, or onie thre of thame chargeing the hauris and " keparis of the erectionis and fundationis of the saidis hospitallis masondewis, almous- " houses and beidhouses, or of quhatsumever landis teyndis rentis, or vther possessionis " gevin and dotat for relief and sustentatioun of the puir, alsweill within burgh as without, " and of all chaiplanreis, prebendareis annuells freir, or nunnis landis disponit to burrowis " to the effect foirsaid fewaris, rentalaris, takismen and intrometteris thairwith, to produce " the saidis fundationis, richtes and tytles outhir fewes or takis quhairby thai brouk " or pretendis richt to onie pairt of the leving and patrimonie of the saidis hospitallis " masondeweis, almoushouses and beidhouses befoir the saidis lordis comissioners at sic dayis " as they pleis assigne, to be sene and considerit be thame, to the effect foirsaid, vnder the " paine of rebelloun and putting of thame to our Soueranes horne with certification and

violence. And laitlie for their greater comfort, IT was weill ordained, that the paines of Law-borrowes suld be divided betwixt the King and the Pairtie offended unto. Neverthelesse, seeing the paines of Law-borrowes hes extended only in time bygane, for safetie of bodielie harme from the person of the compleener: The

"thei failzie, letteris wilbe directed to put thame to the horne, or ellis to reduce for null production and in cais of failzie and null production of the saidis erectionis and vtheris writtis and rychtis abone writtin, at the dayis to be appoyntit thairto, to proceid and direct further chargeis and put out the dissobeyaris or to reduce the pretendit richtes and tytills quhatsumever as thai sall find caus worthie and als to direct letteris to arreist and seques-trat the maillis, fermes profitis, and dewteis of the saidis landis teyndis and vthir posses-sionis, pertening to the saidis hospitallis, or onie thing gevin and dotat for sustentatioun of the puir to remane in the handis of the tenentes and possessouris, quhill the said reforma-tion be maid and perfitit then to be gevin to the puir and helping to reedifie the housse big-git to that effect be oure Soueranes maist noble progenitouris, and their subjectis of guid zeall, vpoun caution always to be found be the saidis tenentis and possessouris that the saidis maillis fermes profitis and dewteis salbe furthcuand to the effectes abone written; and als with power to the saidis Juges the fairsaidis erectionis infetmentis and richtis being producit befor thame to try the qua'tie of thair rentis ordoure of fundatioun and estait, quhairin the rentis and housis thairof presentlie ar and quhairin they find the zeirliche rentis of the saidis hospitallis diminischit or onie pairt or portioun of thair levingis or bigingis appropriat and applyit to particular menis vses contrair the tenoure of thair first funda-tionis and godlie intentioun of thair fundatouris be partis infetmentis, takis or vthir special richtis, to reduce the samyn as the saidis comissioneris sal find caus worthie and geve furth thair decret reductiue thairvpoun, declining all the saidis richtes gevin and sett in prejudice of the first fundatiounis, as said is, null and of nane avall force nor effect in all time coming, and to returne and be appropriat to the saidis almoushousis, hospitallis masondewis, and beidhousis and sustentatioun of the puir being thairin in all times heirefter, according to the tenoure of thair erectionis, sicklike and in the samyn maner as gif the saidis new dispositionis of the patrimonie thairof had never bene maid or grantit. Qlk decreittis the kingis majestie with advise of the saidis thre estatis declaris salbe of als greit force and effect, and sicklike executioun to pass and follow thairon, as gif the samyn had bene gevin and grantit before the haill Lordis of Counsaill and Ses-sioun, sittand in full number prouyding always that all parteis lawful defenss be first hard and discussit as the saidis comissioneris will asert to oure Souerane Lord vpoun the executioun of thair offices gevand thame power in like maner to creat Clarkis and vtheris officers and membris of Court requisite and to ressave thair aithis to that effect for quhome they salbe haldin to anser, witnessis to caus be sumondit suorne and exami-nat, and to call for the production of onie writtis evidendis, or registeris, that may fur-ther the knowledge of the trewth of the said mater, and sicklike to direct onie ane of thair number or ma for visitatioun of the saidis hospitallis masondewes almoushousis and beidhousis gif the same beis found requisite to thame for thair bettir informatioun and generalie to do and use all vthir thingis that to the excusioun of this present commis-sioun is necessarlie requirit. And all the said comissioneris being personalie present acceptit the said comissioun in and vpoun thame, and maid fayth for dew and faythful administratioun thairintill."

¶ This is one of a numerous class of statutes relating to the proper management of funds be-longing to hospitals and other endowments for the poor. Although it is merely a temporary act, it is nevertheless important, in respect that there can be little doubt that the direc-tions given to the Commissioners under this and other similar commissions are such as Judges in the present day would regard as obligatory in the event of any question coming before them as to the management of this kind of property.

Reference is made to the following statutes in Thomson's folio edition of the Scots acts, which relate to the same subject and enforce similar directions, viz. 12th March 1424, ch. 2; 1457, ch. 12; 9th October 1466, ch. 13; 1469, ch. 16; 14th March 1540, ch. 19; 1578, ch. 7; 1579, ch. 51; 23th August 1584, ch. 18; 1592, ch. 19.

malice of the wicked sa increassis, as they cease not be indirect meanes, and hounding out of Limmars, vagaboundes, and uthers not responsal, to invade the innocent persones, not onlie in their bodies, bot to rieve, steale, houch, or slay their Oxen, Horses, and uther Cattel, cut or destroy their Cornes, or to cause eate the same with Bestial, to hound and slay their scheepe with dogges, boast themselves in sik sorte, as they dare not lie in their awin Houses, or to minace their servandes, to lieve their service, quhairthrow their ground may be layed waist, to the utter wrack and depaupering of the Innocentes.

QUHAIRFOIR, OUR SOVERAINE LORD, with advise of his three Estaites in this present Parliament, Ordainis, That all Letters of Law-borrowes, sall be direct in time cumming, at the instance of the pairties compleenand, Chairgeing the persones compleened upon, to finde sicker sovertie and Law-borrowes, that the compleeners, their wives, bairnes, tennentes and servandes, sall be harmeles, and skaithles in their bodies, Landes, Takkes, possessiones, gudes and geare, and on na wayes to be molested or troubled theirin, be the persones compleened upon, nor na uthers of their causing, sending, hounding-out, receipting, command, assistance and rati-habition, quhome they may stoppe or let directlie or indirectlie, utherwayes nor be ordour of Law and Justice, under great paines to be modified be the Lordes of Session, or uthers ordinar Judges, Be quhome, in case the said Law-borrowes sall be dewlie tryed to be broken, the ane halfe of the paine sall perteine to OUR SOVERAINE LORD, and the uther halfe to the pairtie grieved, according to the effect and meaning of the said Act, maid to that effect of befor.<sup>122</sup>

23. *Anent deforcements, breaking of Arreistmentes, and Alienationes maid in defraud of Creditoures.*

FORSAMEIKLE, As it is hevelie compleened to OUR SOVERAINE LORD, be divers his subjectes ; That quhen they have upon their lang travel and expenses recovered their sentence, they ar deforced in execution theirof. Lyke as quhen Arreistmentes ar maid to make the gudes furth cummand, after the recovery of the debt, the samin ar contempnandlie broken. And farder, the execution of sentences and decreetes are oftymes impedit be fraudful alienationes of the debtoures Landes and gudes, maid be them throw colorate meanes, to their friendes and conjunct persones. And the Pleyes and actions upon deforcements, breaking of arreistments, and reduction of fraudeful alienationes, hes bene swa tedious, sump-tuous and langsum, that very fewe of them are brocht to ony gude end, quhairby our Sovereine Lordis Authoritie is contemned, and his Subjectes are brocht to great inconvenient. For remeid quhairof, IT IS statute and ordained, That the Lordes of Council and Session proceede summarlie and diligentlie in all actiones of deforcementes, and breaking of arreistmentes, to be intended befor them, at the instance of quhatsumever persones, and speciallie that the saidis actiones, quhen they are called, sall with all convenient speed without intermission be put to ane poynt, after the calling theirof. And that the persones convict of deforcement, or breaking of arreistment, sall be punished be the Eschelt of their gudes movabil, and punischment of their persones, at our said Sovereine Lordis will, according to the Lawes observed of befor, with this addition : That the pairtie recoverer of the sentence, sall be first payed of his debt and of his expenses, to be heichlie taxed be the saidis Lordis, and of ane certaine summe of money to be modified at the saidis

<sup>122</sup> See Erskine, b. i. tit. iii. § 21, and b. iv. tit. i. § 16.



Lordis discretion, to the pairtie, for the damage and interest sustained ~~by him~~. Anent the quhilk the pairtie interest, sall have the reddie execution upon the first and reddiest gudes and gear of the person convict: Notwithstanding the richt of the Escheit pertaining to our said SOVERAINE LORD, quha for weill of his subjects, wills and grantis, that the creditours be preferred to him in this case. And further with advise of his saidis three Estaites, IT IS statute and ordained be his Hienes: That all gifts of escheit quhilkis sall be given hereafter, to quhatsumever person or persones of gudes, geare and uthers cummand in his Hienes handes for deforcement, or breaking of arreistment, sall containe expresse exception and reservation, to the Creditour, of the summes recovered for his principal debt, expenses and summe, to be modified as said is. And gif ony gift of Escheit proceeding upon the cause fairsaid, be given without the said reservation and exception, the same sall be null and of nane avail. And siklike, for the greater expedition of reduction of Alienationes and dispositiones of Landes and gudes, maid in fraude of the Creditour, IT IS statute and ordained, that the samin be maist summarlie decided and privileged be summondes upon 21. dayes warning, without diet, table or continuation of uther summonda. And that the Pairtie receiver of the saidis fraudulent alienationes and dispositiones, sall not be heard to defend theirin, except that they (befoir they be admitted to produce the saidis alienationes and dispositiones, and to answer to the summonda) consigne in the handes of the Clerk of Register and his Deputes, for quhome he sall be halden to answer, sik summes of money, as sall be modified, be the discretion of the saidis Lordes, to be delivered to the pairty persewer, in case the saidis alienationes and dispositiones sall be declared fraudulent.<sup>123</sup>

24. *Anent registration of inhibitiones and interdictiones.*

ITEM, Albeit interdictiones and inhibitiones, for many great and weichtie considerations, to divers intentiones, ar very necessar and profitable: Nevertheless, it is of lait considered, that the saidis inhibitiones and interdictiones, ar greatly abused, to the hurt and prejudice of our Sovereine Lordis lieges, contrarie to the end quhairunto they were first directed: In sa far, as interdictiones, for the maist pairt proceedis upon consent of Pairty, like as the saidis interdictiones, and letters of inhibition, oftentimes proceedis upon licht causes: The executiones quhairrof, ar sundrie times forged and fenzeit, and after mony zeires, the executor and witnesses being deceased, the saidis inhibitiones and interdictiones ar used against our Sovereine Lordis lieges, at the instance of the receivers theirof, and uthers, for rescinding and retreating of contractes, infestmentes, and uther richtes upon allegiance, that the samin are maid fraudfullie, after the publication of the said interdiction, and inhibition: Be the quhilk craftie dealing, sik as contracted *bona fide*, or brocht in danger to their great damage, and to the advantage of the saidis persones, abuseres of the saidis inhibitiones and interdictiones. For remeid quhairrof, and to the effect that everie ane of our Sovereine Lordis lieges may knaw and understand, the conditione & qualitie of the person, with quhom he contractis in this head, quhidder he be subject and thrall to interdiction of inhibition, or be at his awin freedome and libertie to contract. IT IS statute and ordained, that all inhibitiones and interdictiones to be raised hereafter for quhatsumever cause, with the executiones and indorsationes theirof, be within 40. dayes after the publication and execution of the saidis inhibitiones and interdictiones, produced first to the Schireffe Clerk of the Schire, quhair the persone interdicted or inhibit dwellis, and makis his

<sup>123</sup> See Erskine, b. i. t. iii, § 21; and b. iii. t. vi. § 14.

residence. And gif the said persone have his landes and heritage, or the maist pairt theirof lyand in ane uther Schirefdome, nor quhair he dwellis: That the person, at quhais instance the other is interdicted or inhibite, produce the said interdiction and inhibition, dewly execute and indorsat to the Clerke of the Schire, quhair the saidis lands lyes, within the samin 40. dayes. Quhilkis letters of interdiction and inhibition, with the execution theirof, the saidis Schireffe Clerkes, sall insert in their registers, takand for everie letter, with the execution theirof, five schillings. Quhilk letter, with the execution theirof, they sall signe with their subscription, and deliver the samin swa signet to the partie, within xxiv. houres, nixt after the receipt theirof. The extract of the quhilk register, sall have as great faith and strength, as gif the original wer schawin, except the parties havand interest to oppone against the saidis inhibitiones and interdictiones, offer to imprieve the samin, be way of action, or exception. In the quhilk case, the pairtie purchaser of the saidis letters, and uthers havand interest to defend the samin, sall be halden to produce the principalles, and originalles, notwithstanding that they be registrat, as said is. And that na interdiction or inhibition to be raysed and executed heirafter be of force, strength, or effect, to onie intention, bot the samin to be null and of nane avail, except the samin be dewlie registrat, as said is.<sup>124</sup>

#### 26. *Anent the Convention of Burrowes.*

FORSAMEIKLE, As it was found necessar to OUR SOVERAINE LORD, and his Hienes Predecessours, That the Commissioners of Burrowes convene at sik times, as they suld think gude; in quhat Burgh they thought maist expedient, with full commission, To treat upon the weillfair of Merchandis and Merchandice, gude rewle and statutes for the commoun profit of Burrowes, as at mair length is contained in the Acts of Parliament maid theiranent, and anent the Priviledges of Burrowes. Theirfoir our Sovereine Lord, with advise of his three Estaitis of this present Parliament. Ratifies and apprevis the saidis Actes. And for the better observation of the saidis Conuentiones be sik Burrowes, as hes heirtofoir not sent their Commissioners at onie time theiirto, hes statute and ordained, that in time cumming, quhen onie conventiones of Burrowes is appoynted, be the maist pairt of the saidis Burrowes, or be the Burgh of *Edinburgh* and onie sex or aucht of the rest, The Burgh warned theiirto be ane Missive bill of the Provost and Baillies of the Burgh, quhair the said convention is to be halden, or utherwayes lauchfullie cited theiirto, and not compeirand be their Commissioner sufficientlie instructed sall pay for the charges of the Burghes that sall convene the summe of twentie pundes. And ordainis the Lordes of Council and Session, to grant and direct letters of horning or poynding, against the Burrowes absent fra the same Convention, and adjudged bee the remanent Burrowes, to have incurred the said paine and unlaw. And this at the instance of the Burgh of *Edinburgh*, without farther proces or calling of pairty theiirto. The saidis Lords seand the Act authenticklie subscribed be the Clerk of that Convention, That they ar absent and convict, as said is.<sup>125</sup>

<sup>124</sup> This is the first act which established a Register of Inhibitions and Interdictions. See Erskine, b. ii. t. xi. § 5, *et seq.*

By 1597, ch. 35, registration is made competent in the books of the proper jurisdiction within which the party resides, whether it be a baillerie or stewartrie, either of Royalty or Regality. By 1600, ch. 22, registration is also made competent in the Books of Council and Session, and such registration affects lands lying within any part of Scotland.

<sup>125</sup> The acts here ratified are 1487, ch. 17; and 1578, ch. 11, which see, with the notes thereon.

## APUD EDINBURGH,

XIX DIE MAII, A.D. M.D.LXXXIV.

2. *An act confirming the Kingis Majesties Royal power over all Estaites, and subjectes within this Realme.*

FORSAMEIKLE As sum persones, being lately called befor the Kingis Majestie, & his secreit Councel: to answer upon certaine points to have bene inquired of them, concerning sum treasonable, seditious, and contumelious speeches, uttered by them in Pulpit, Schooles, & utherwaies, to the disdaine & reproch of his Hienes, his Progenitours, and present Councel, contemptuously declined the judgement of his Hienes, & his said Councel, in that behalfe, to the evil exempil of utheris to do the like, gif timous remeede be not provided. Therefor our Soveraine Lord, and his three Estaites assembled in this present Parliament, ratifies, and apprevis, and perpetually confirmis the royal power, & autoritie over all Estaites, alsweil Spiritual, as Temporal, within this Realme, in the person of the Kingis Majestie, our Soveraine Lord, his aires and successours: And als statutis and ordainis, that his Hienes, his saidis aires and successours, be themselves and their Councelles, ar, and in time to cum sall be judges competent to all persones his Hienes subjectes, of quhatsumever estaite, degree, function, or condition that ever they be of, Spiritual or Temporal, in all matters, quhairin they, or ony of them sall be apprehended, summond, or charged to answer to sik thinges as sall be inquired of them, be our said Soveraine Lord and his Councel. And that nane of them, quhilkis sall happen to be apprehended, called, or summond, to the effect fairsaid, presume, or tak upon hand to decline the judgement of his Hienes, his aires and successours, or their Councel in the premisses, under the paine of treason.<sup>126</sup>

3. *Anent the autoritie of the three Estaites of Parliament.*

THE Kingis Majestie, considering the honour and the autoritie of his supreme court of Parliament, continued past all memory of man, unto thir dayes, as constitute upon the frie votes of the three Estaites of this auncient Kingdome. Be quhom the same under God, hes ever bene uphalden, rebellious and traitorous subjectes punished, the gude and faithfull preserved, and maintained, and the lawes and actes of Parliament (be quhilkis all men ar governed) maid and established. And finding the power, dignitie, and autoritie of the said Court of Parliament, of lait zeires called in sum doubt, at least sum curiouslie travelling to have introduced sum innovation theiranent, his Majesties firme-will and mind alwaies being as it is zit: That the honour, thorty, and dignitie of his saidis three Estaites sall stand, and continew in the awin integritie, according to the ancient, and lovabill custome by-gane, without ony alteration, or diminution. Theirfoir it is statute, and ordained, be our said Soveraine Lord, and his saidis three Estaites, in this present Parliament, that nane of his Lieges and subjectes presume, or tak upon hand, to impugne the dignitie, and the autoritie of the saidis three Estaites, or to seek, or procure the innovation, or diminution of the power, and autoritie of the same three Estaites, or ony of them in time cumming, under the paine of treason.<sup>127</sup>

<sup>126</sup> In reference to this act, see Mackenzie's Observations, p. 207; and Erskine, b. i. t. iii. § 9.

<sup>127</sup> In reference to this act, see Hume, vol. i. p. 654, *et seq.*, and 7th Anne, ch. 21, there referred to.

4. *An act discharging all jurisdictions, and judgements, not approved be Parliament, and all assemblies, and conventiones, without our Sovereine Lordis special licence and commandement.*

FORSAMEIKLE, as in the troublous times, during thir xxiiij. zeires, by past, sindrie formes of judgements & jurisdictions, alsweil in Spiritual, as Temporal causes, ar entred in the practize and custome, quhairby the Kingis Majesties subjects ar often-times convocat, and assembled togidder, and paines alsweil civil and pecunial, as Ecclesiastical, injoined unto them : processes led and deduced : sentences, and decreetes given, and the same put in execution : Na sik ordour as zit, being allowed of, and approved be his Majestie, & his three Estaites in Parliament, contrare the custom observed in onie other Christian Kingdome, or weil governed commoun weill : And to the diminishing of the force, and power of his Hienes awin Lawes, be the quhilkis his Majesties subjectes aucht to be ruled : And speciallie his Hienes & his Estaites, considering that in the saidis assemblies, certaine his subjectes have taken upon them to justifie, and auctorize the fact perpetrat against his Hienes person and Estate, at *Ruthven*, and prosecuted thereafter, quhill his Majestie at Gods pleasure, recovered his libertie, having in their pretented maner, maid Actes theirupon, keipis the same in Register, and as zit seemis to allow the said attemptat, althocht now publickly condemned be his Hienes and Estaites as treasonable, nane of the authors theirow, having craved his Hienes pardon theirfoir, For remeid quhairof, in time cumming, swa that according to the lovabil act of his dearest Grand-sir, King *James* the Fourth, of worthie memorie, all his Hienes lieges (being under his obeysance) mon be ruled be his awin Lawes, and the commoun Lawes of this Realme, and be nane uther Lawes : Our Sovereine Lord, and his three Estaites, in this present Parliament, dischargis all judgements, and jurisdictions, Spiritual or Temporal, accustomed to be used and execute, upon ony of his Hienes subjectes, quhilkis ar not approved be his Hienes, and his saidis three Estaites, convened in Parliament : and decernis the same to cease in time cumming, quhill the ordour thereof be first seene, and considered be his Hienes, and his saidis three Estaites convened in Parliament, and be allowed, and ratified be them : Certifieing them, that sall proceed in using, and exercising of the saidis judgements, and jurisdictions, or in obeying of the same, not being allowed, and ratified, as said is : They sall be repute, halden, called, persewed, and punished as usurpers, and contemnors of his Hienes authoritie, in exemple of utheris. And als it is statute and ordained, be our said Sovereine Lord, and his three Estaites : that nane of his Hienes subjects : of quhat-sumever qualitie, estaite, or function they be of, Spiritual or Temporal, presume or tak upon hand, to convocare, convene, or assemble themselves togidder, for halding of Councelles, Conventions, or Assemblies, to treat, consult, & determinat in ony matter of Estaite, Civile or Ecclesiastical (except in the ordinar Judgement) without his Majesties special commandement, or expresse licence had and obtained to that effect, under the paines ordained be the Lawes and actes of Parliament, against sik as unlawfully convocatis the Kingis Lieges.<sup>128</sup>

5. *The causes and maner of deprivation of Ministers.*

OUR Sovereine Lord, and his three Estaites, assembled in this present Parliament, willing that the word of God sall be preached, and Sacramentes adminis-

<sup>128</sup> See Mackenzie's Observations, p. 209.

trat in puritie and sinceritie : and that the rentes, quaharon the Ministers aucht to be susteined, sall not be possessed be unworthie persones, neglecting to do the dueties, for quhilkis they accepted their benefices, being utherwaies polluted with the fraill and enorme crimes, and vices after specified. It is theirfoir statute, and ordained be his Hienes, with advise of the saidis three Estaites : That all Persones, Ministers or Readers, or utheris provided to benefices, sen his Hienes Coronation (not having vote in his Hienes Parliament) suspected culpable of heresie, Papistrie, fals and erroneous doctrine, commoun blasphemie, fornication, commoun drunkennes, non-residence, plurality of benefices having cure, quhairunto they are provided sen the said Coronation, Simonie & dilapidation of the rentes of benefices, contrare the lait Act of Parliament, being lawfully, and ordourly called, tryed, and adjudged culpable, in the vices and causes abone written, or onie of them, be the ordinar Bishope of the diocese, or utheris the Kings Majesties commissioners, to be constitute in Ecclesiastical causes, sall be deprived alsweil fra their function in the Ministrie, as from their benefices, quhilkis sall be thereby declared to be vacand, to be presented and conferred of new, as gif the persones possessors theirof, were naturally dead : And that it sall be esteemed, and judged non-residence, quhair the person being in the function of the Ministry, provided to ane benefice, sen the Kings Majesties Coronation makis not residence at his manse, gif he ony hes : And failzeing thereof, at sum uther dwelling place within the Parochin, bot remainis absent theirfra, and from his Kirk, and using of his office, be the space of four Sabbath dayes in the haille zeir, without lauchful cause and impediment, allowed be his ordinar. And quhair onie person, is admitted to maa benefices, havand cure, sen our Soveraine Lordis Coronation, the acceptation of the last, sall be sufficient cause of deprivation from the remanent, swa that he be provided to twa, or maa benefices havand cure, sen the time of the said Coronation. And nevertheless this present Act sall not extend to ony person, provided to his benefice befor the said Coronation, neither sall the bruiking of that office, quhairunto he was provided of befor, induce pluralitie of benefices in this case, bot he sall allanerly tine his richt of the benefice, quhairunto he was provided sen the said Coronation allanerly : And union of Kirkis to ane benefice ; not to be judged pluralitie, quhil farder ordour be established and provided in that behalfe : Like as alsawa, the persones being in the function of the Ministrie, that sall happen to be lawfullie and ordourly convict befor our Soveraine Lordis Justice general, or utheris their Judges competent, of capital crimes, sik as treason, slaughter, mutilation, adulterie, incest, theft, commoun oppression, usurie against the Lawes of this Realme, perjurie, or falsed : They being likewaies lawfullie and ordourlie deprived fra their function in the Ministrie, be their ordinar, or the Kingis commissioners in Ecclesiastical causes. The benefices possessed be the saidis persones to vaik, be reason of the said conviction, and deprivation. And this to have effect and execution, onlie for crimes, vices, faultes, & offenses, that sall happen to be committed after the dait heirop.<sup>129</sup>

<sup>129</sup> This act, so far as not *ex facie* temporary, appears in force, with the exception that the titular Bishops here mentioned are now superseded by the Presbyteries as Ordinaries.

As to the modern forms of process, see Dr Hill on the Practice of the Judicatories of the Church of Scotland.

6. *That Ministers sall not be Judges, nor exerce any uther ordinar office that may abstract them fra their office.*

THE Kingis Majestie, and his three Estaites assembled in this present Parliament, earnestly desirous, that all his loving and gude subjectes, sall be faithfullie instructed in the doctrine of their salvation, and that the Ministers of Gods word and Sacraments, may the better, and mair diligently attend upon their awin charges and vocation: Therefoir statutis, & ordainis, that all the saidis Ministers, sall faithfullie await there-upon, to the comfort, and edification of the flockes committed unto them: And that none of them presently being in that function, or that sall be admitted theirt, in time cumming, sall in any waies accept, use, or administrat any place of judicature, in quhat-somever civil, or criminal causes, nocht to be of the Colledge of Justice Commissioners, Advocates, Court Clerkes, or Notaris in any matters (the making of Testamentes onely excepted) under the paine of deprivation fra their benefices, livinges, and function: And gif they failzie heirin, being called, tryed, and adjudged culpable, be their ordinars, or be the Kingis Majesties Commissioners in Ecclesiastical causes: They sall then tyne their saidis benefices and livinges, and uthers qualified persones, sall be presented, and provided thereto, as gif they wer naturallie dead.

8. *Anent slanderers of the King, his Progenitours, Estait and Realme.*

FORSAMEIKLE, as it is understand, to our Sovereine Lord, and his three Estaites assembled in this present Parliament, quhat great harme, and inconvenient hes fallen in this Realme, chiefly sen the beginning of the civile troubles, occurred in the time of his Hienes minoritie, throw the wicked and licencious publick and private speaches, and untrew calumnies of divers his subjectes, to the disdaine, contempt and reproch of his Majesty, his Councel, and proceedings, and to the dishonour & prejudice of his Hienes, his Parents, Progenitours, and Estait. Steiring up his Hienes subjectes theirby to misliking, sedition, unquietnes, and to cast of their dew obedience to his Majestie, to their evident perrel, tinsel, and destruction, his Hienes continuing alwaies in love and clemencie, toward all his gude subjectes, & maist willing to seek the safetie and preservation of them all, quhilhis wilfully needles, & upon plaine malice, after his Hienes mercy and pardon, ofttimes afoir granted, hes procured themselves, be their treasonable deeds to be cut off, as corrupt members of this commoun weill: Therefore it is statute and ordained be our Sovereine Lord, and his three Estaites, in this present Parliament, that nane of his subjectes (of quhat-somever function, degree, or qualitie in time cumming) sall presume or take upon hand privatly, or publickly, in Sermones, Declamationes, or familiar conferences, to utter any false, slanderous, or untrew speaches, to the disdaine, reproche, and contempt of his Majesty, his Councel, & proceedings, or to the dishonour, hurt, or prejudice of his Hienes, his Parents, and Progenitours, or to meddle in the affaires of his Hienes, and his Estait present, by-gane, and in time cumming, under the paines contained in the Actes of Parliament, against makers and tellers of leesinges: Certefieing them that sall be tryed contraveners theirow, or that hearis sik slanderous speaches, and reportes not the same with diligence, the said paine sall be execute against them, with all rigour, in exemple of uthers. Attoure, because it is understand and to his Hienes, and to his three Estaites, that the buikes of the Chronicle, and *De jure regni apud*

*Scotos*, made be umquhile, Maister GEORGE BUCHANNANE, and imprinted sensine, containis sindrie offensive matters, worthie to be deleete: IT IS THEREFORE statute and ordained, that the havers of the saidis twa volumes in their handes, inbring, and deliver the same to my Lord Secretare, or his deputes, within fourtie dayes, after the publication hereof, to the effect, that the saidis volumes may bee perused, and purged of the offensive, and extraordinarie matters specified therein, not meete to remaine as Recordes of trueth to the posteritie under the paine of twa hundreth pundes, of everie person failzeing heirin. And quhair ony ar not responsal to pay the said summe, to be punished in their persones, at OUR SOVERAINE LORDIS will. And to the effect, that this ordinance may cum to the knowledge of all OUR SOVERAINE LORDIS Lieges, ordainis publication to be maid heirof, at the mercat croce of the head Burrowes of the Schires, and utheris places needeful, That nane pretend ignorance theirof: And the penaltie contained therein, to be executed with all rigour against the havers of the saidis buikes, the said space of fourty dayes being by-past, after the publication, and proclamation of the said Act in every Schire, as said is.<sup>130</sup>

*17. Addition to the Actes maid of befoir, anent the cumming to Courtes, and compeiring at the Barre, in sober maner, in persute and defence of criminal causes.*

OUR Sovereine Lord, and his three Estaites, convened in this present Parliament, ratifies, and appreivis, and for his Hienesse and his Successoures, perpetually confirmis the Act maid be King JAMES the Second, of worthie memorie, Intitulate: That na man cum to Courtes, bot in sober wayes: As also the uther Act, maid in the Regiment of his dearest Gud-dame MARIE, Queene Dowrier and Regent of this Realme, anent the cumming to the Barre for persute, and defense in criminal causes, and ordainis the saidis Actes to be inviolablie kepted, and to be put to execution in time cumming, with this addition; That nane of his Hienesse Subjectes repaire to Courtes, and in special, to his Hienes Justice Court, or utheris Justices quhatsumever, for criminal causes bot be sik number and company as the saidis actes providis, under the paine of incurring of the crime of convocation of our Sovereine Lordis lieges, to be execute asweil upon the persones quha sall happen to make the said convocation, or quha sall be convocate, with all rigour. And further, for reformation of the troubles and tumultes, quhilkis hes fallen out, and continuallie growis be the assembling of our Sovereine Lordis lieges, to fortifie and assist, the persute and defence of criminal causes. mooved befoir our Sovereine Lordis Justice, quhair-upon great inconvenientes hes followed, to the contempt of Justice, hinder of the course of the commoun Law, and punishment of offences. IT IS statute & ordained, that in all time cumming, quhen onie letters sall happen to be direct for onie crime or offense to ane particular diet, that the pairtie raisers, and purchessares theirof, at the finding of their caution, to report the letters dewlie execute and indorsat at the day appoynted, sall also finde caution to the Justice Clarke, and his deputes acted in the buikes of adjornal, That they sall not enter within the Tolbuith or place, quhair the saide Justice court sall be halden, bot accompanied with the number of persones specified in the former Act of Parliament maid thairanent, comptand therein their preloquutores, quha allanerlie sall

<sup>130</sup> The punishment here enacted is modified by 1703, ch. 4; 6th Geo. IV. ch. 47, and 7th Will. IV. ch. 5.

remain with them to their departing furth of the place of justice, under the like paine, quhilk they wald and suld have incurred, in-case the saidis letteris had nocht bene reported at the day dewlie execute and indorsat. And sik-like, that the saidis letters to be raised to particular diettes, for causes criminal, beare this clause: Commanding the officiar to charge the persones delated and compleened upon, to finde sikker sovertie to the said officiar executor, within sixe dayes nixt after they be charged, that they sall compeir the day and place contained in the saidis letters, accompanied in sober maner, with their domesticque and houshald servandes. And that in the Town of the resorte of the said Justice, they sall behave themselves in quiet maner, onely accompanied, as said is: And enter in the Tol-buith, or place quhair Justice sall be halden, accompanied with the number of persones allenaryly specified in the former Act of Parliament, comptand therein, thair proloquutores, quha sall onely remaine with them in the said Tolbuith, or place quhair Justice sall be halden, quhill the Court be ended. Quhilk soverty sall be taken under this condition: That gif the pairtie defender, urtherwayes compeir or present himselfe in the place of Justice, and be found with ony greater number, nor is before specified, their soverties sall be unlawed, as gif they had not compeired: And the parties defenders, quha hes found the said sovertie, sall be adjudged fugitive fra the Law, and put to the horne, and their escheit in-brocht, be reason of the excesse of the said number, in the samin maner, as gif they had not compeired. And sik-like, quhatsumever persones sall be found in the said Tol-buith, or place, where Justice sall be halden, the Justice and his deputes for the time, sall make record in the buikes of adjornal of their presence, in company with ony of the pairties, attour the saide number appoynted. And immediately thereafter, sall direct his precepts to denunce the saidis persones rebelles, and put them to the horne, and ordeine their movable gudes to be escheited and in-brocht to OUR SOVERAINE LORDIS use, for their contempt. And als it is statute and ordained, that in all the premisses, the denuntiationes to be maid at the mercat-croce of the head Burgh of the shire, quhair the said Justice court sall be halden allanerly. And the processe of horning registrat in the buikes of adjornal, sall be als sufficient, as gif the said denuntiation were maid at the mercat croce of the head Burgh, and as gif the said proces of horning were registrat in the Schreffes buikes of the Schire, quhair the persones denounced dwellis: Notwithstanding the act made of befoir, anent the registration of horning, in the Parliament halden at *Edinburgh*, the xxiv. day of October. 1579.

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### APUD EDINBURGH,

XX DIE AUGUSTI A.D. M.D.LXXXIV.

6. *Possession be the space of five zeirs, is sufficient to the King, or his Donatour, of landes, takkes, teyndes, cum in his handes, be fore-faltour.*

**FORSAMEIKLE** As by the commoun Law of this Realme, the lands and heritages of all persones convict of treason, halden immediatly of our Sovereine Lord, ar adjudged to pertaine to his Hienes, and to return as propertie to his Crown: And als his Hienes, hes richt and power to dispone quhat-sumever urther landes and heritages, pertaining to the persones convict of lese-majestie, quhilkis ar immediately halden of ony of his subjectes, be presentation of ane heritable tennent,



to the Over-lord. And in like manner hes richt and title to all takkes and possessiones of teindes and landes, bruiked be the saidis persones befor their conviction: and as the crimes of treason growis within this Realme: Sua the fraudeful inventiones, to the hurt and prejudice of our said Sovereine Lordis Estaite, daily mair and mair increasis, be abstracting of the evidentes, infestmentes, and seasinges of the landes and heritages, takkes, and utheris richtes, appertaining to the persones quhilks ar convict and fore-faltd for lese-majestie: Tending thereby to draw our Sovereine Lord and his Successours, and the persones to quhom the saidis landes and heritages foresaidis, ar, and sall be hereafter disponsed, in question of their heritable richtes, and titles of their rowmes and possessiones, nocht having in their handes the evidentes of the saidis persones convict, or to be convict, as said is. For remeid quhairof: It is statute and ordained be our said Sovereine Lord, & the three Estaite of this present Parliament, that all Landes, Lordshippes, Barronnies, Annual-rentes, milnes, multures, fischinges, tennentes, tennandries & service of free tennentes, & utheris heritages, quhat-sumever, quhilks have bene, or hercafter sall be, peaceablie bruiked, and possessed be quhat-sumever persones forefalted, or that hereafter sall be forefalted for crimes of treason and lese-majestie, committed, or that hereafter sall be committed against his Hienesse and his Successours: Or be them to quhom our Sovereine Lord and his Successours suld succede, be reason of the fore-faltour of their nearest aires, as their heritage, be labouring the same with their awin gudes, setting the same to tennentes, & up-lifting of the mailles their of, as their heritage: And awa repute, halden and esteemed heritable possessours thereof, be the space of five zeirs, immediatly preceeding the proces and sentence of fore-faltour, led, or to be led against them, be the space of five zeirs, immediatly preceding the decease of the persones, to quhome our said Sovereine Lord, suld, or may succede, as aire throw the forefaltour, led, or to be led against their nearest aires: That all & sundrie the saidis Landes, Lordshippes, Barronnies, annual-rentes, tennentes, tennandries, and service of free-tennentes, milnes, multures, fischinges, and utheris heritages, quhat-sumever, hes appertained, and sall appertaine to our said Sovereine Lord and his Successours, hes becummin, and sall becum in their handes, as escheit, to be disponsed and used be them, as their propertie, in all times cumming. Swa that hereafter, na question sall be mooved to his Hienes & his Successours, nor zit to the persons quhilks have alreadie obtained, or hereafter sall obtaine, heritable richt of the saidis Landes, Lordshippes, annual-rentes, & uthers above specified be their disposition. Notwithstanding, that they be not able to schaw, nor produce in judgment, the heritable richt and title thereof: Or contractes, renunciations, and utheris securities maid there-aneut, to the persones fore-faltd, or to be fore-faltd, as said is, or their predecessours. And to the effect that the said five zeires possession of the saidis persones, as heritable possessours, may be sufficiently verified and proved, our said SOVERAINE LORDE, and his Successours, sall, at all times needful and convenient, at the instance of his Advocate, or quhat utheris his Lieges, having interest, direct commissions under the testimonial of the great Seale, in dew and competent forme, makand sik persones as his Hienes, be the advice of the Lordes of his secreet Council, sall finde maist meete and expedient his Schireffes in that pairt, to tak cognition be ane condigne assise, of the Schirefdomes quhair the lands lies, or utheris least suspected, quha best knawis the veritie, quhat Landes Lordschippes & quhat heritages war bruiked and possessed be the saidis persones convict or to be convicted of treasoun, and war bruiked be them in manner foirsaid, as heritable possessours their of. Sa commounlie halden, repute and esteemed, be the space of the saidis five zeires, immediatlie preceeding the processe and sentence of foir-faltour led, and to be led

against them, quhilkes ar or sall happen to be heirafter convicted of treasoun, as said is. And quhat Lands war bruiked be the personis, to quhome OUR SOVERAINE LORD and his Successours, may or suld succede as aires through foirfaltour led, or to be led against them for treasoun, as said is. And to call all parties havand or pretendand interest. Quhilks persons of Assise, sall give their final determination thereupon befoir the Judge: quha sall interpone his decreete and authoritie theirto. And theirafter sall retoure the same to his Hienes Chancellorie, under the sealles of the saidis assise, quhair the same sall remain, *ad perpetuam rei memoriam*. And sall in all times theirafter make als full faith in Judgement, as out-with: and be of als great strength, force and effect, to OUR SOVERAINE LORD, and his Successours, and utheris havand richt, be their disposition, for bruiking of the saidis Landes, Lordschippes, heritages and annual-rentes, as gif the heritable infetments, charters and seasinges theirof, maid to the saidis persones fore-faltd, or to be fore-faltd, as said is, or their predecessours, was schawen and produced in judgemente. And as concerning takkes & possessiones of lands & teindes, bruiked & possessed be the saidis persones fore-faltd: or the persones to quhome our said Sovereine Lord, and his Successours sulde or may succede, as aires throw foirfaltour led, or to be led against their narrest aires: It is statute and ordained that letters be directed, be deliverance of the Lords of his Hienes secreet Councel, at the instance of his Hienes Comptroller, Or sik as hes obtained, or that sall happen to obtaine, be OUR SOVERAINE LORDIS gift, the richt of the saidis takkes and possessiones, Chargeing the possessours of the saidis lands and teinds, to enter the saide Comptroller or Donatour theirto: To be peaceablie possessed and bruiked be them: ay and quhill they be lauchfullie called, and ordourlie put theirfra be the Law, within ten dayes nixt after the charge, under the paine of rebellion and putting of them to the Horne: And gif they failzie therein, The saidis ten daies being by-past, To denunce them rebelles, and escheit all their moovable gudes to his Hienes use. And that they sall not be altered, heichted in maill or dewtie, or remooved fra the saidis takkes or possessiones of Landes, or teinds, for the said space of five zeires. That in the mene tyme they maie have time and commoditie to search & seek out the takkes, richtes, titles and provisiones of them, quhom of their richtes, and securitie proceedis: & quhais place they succede unto, be forefaltour & escheit, as said is. Quhairby they may maintene & defende their richt or possession of the landes or teindes acquired, as said is. And that alwaies the fruites of the saidis landes, rowmes, & possessiones, for the said space of five zeirs, sall apperteine and remaine with our said Sovereine Lord, & his donatour for ever. Because his Majestie and his donatoures may be greatly defrauded: As also vassalles and sub-vassalles to fewars hurt, through the absenting & abstracting of the evidentes and richtes of the persons fore-faltd: Sum pretending to claime annual-rentes, & few dewties of landes, fallen in fore-faltour of many zeires preceeding: Quhilkis probably are taken away be posteriour richtes or discharges, consiled or abstracted be the said persones fore-faltd. Therefore it is statute and ordained, be our said Sovereine Lord, and his three Estaites: That na person presented be our Sovereine Lord, to few-landes fore-faltd, nor ony vassal of ony fewer fore-faltd, sall be compelled to produce the acquittances of few mailles, or annual rentes, of their fore-faltd landes, of ony zeires preceeding the fore-faltour of his immediat superiour: Nor zit of ony zeires sen the said landes come in his Hienes hands, be reason of the fore-faltour: notwithstanding, ony clause irritant, contained in the infetmentes, or titles of the fore-faltd persones, quhilkis were obscure to the persones presented be his Hienes, and sub-vasselles foresaidis: They alwaies payand the saidis annual rentes, or few dewties for the time to cum, how

soone it sall be verified, that the landes were sa oblished be the infeftmentes of the saidis persones forefalted, abstracted, as said is.<sup>131</sup>

10. *In causes of double poynding, the partie quhais lauchfullie summoned, and compeiris not, sall not be hearde in the second instance.*

FORSAMEIKLE As complaint being mooved, at the instance of tennentes of landes, against divers parties, be quhom they ar charged, poynded and distreinzed, for their mailles and dewties : And of the parties compleined upon compeirand, and schawand their richts and titles of the landes : and the uther being lauchfullie summound, and not compeirand, the partie compeirand, is ordained to be answered and obeyed of the mailles and dewties of the landes, being in question, according to his richt & title then schawen and produced ; Not *simpliciter*, but with this limitation, for oucht that the Lordes of Council or other judges ordinaris, before quhome the saide action dependis had seene. And the uther partie lauchfullie summoned, & not compeirand, is likewise decerned, to desist and cease fra all farther molestation, or troubling of the saidis tennentes, for oucht that the saidis Lordes then had seene. Be the quhilk decreete, the parties compeirand, hes undoubted richt to the mailles and dewties of the landes, ay, and quhill he be warned at the instance of the uther party, and better richt schawen. And because mony zeires, after the giving of the same decreet, the partie quha was lauchfully summoned, and be contumacie was absent, hes intended action for reduction of the said decreet, from the beginning : And consequently, for compelling of the partie obtainer theirof, to rander and restore the haill profites of the landes, intrومتted with be him, of mony zeires, expresse against the provision of the common Law, and gude reason : That he quha compeiris and obeyis the judge, sall be in worse case, nor he quha contemned the judgement, and absentis him there-fra. For remeid quhairof, it is statute and ordained, that quhair-ever the partie not compeirand, is lauchfullie summoned, and schewis nocht richt, he sall not be heard to retreat and reduce the said decreete, nor zit sall be restored againe to the same : Except he have an necessary cause of his absence, & nocht compeirance quhen he was summound, nor zit sall have ony action for the by-run profites, intrومتted with, be the obtainer of the decreete, fra the obtaining thereof. And he quha obtainis the said decreete, sall onely be oblished to answer the uther partie compleinand in the second instance, according to the richt, quhilk is then competent in his person, & quhilk he sall schaw & produce valziablie to bruik, at the time of his complaint and sute, and na urtherwaie. And that this ordour be keeped & observed, before the Lords of Session, & uther judges, as effeiris, nocht only in all sik questions, as may occurre hereafter : But als in all matters of the like sort, by-gane intended, or to be intended, dependant & undecided before the saidis Lords of Session, & uther Judges ordinar. It is alwaies provided, that gif the partie called, & not compeirand, in the first instance be *minor*, & have tutors & curators, he sall have his action for his damage & interest susteined be him, throw his non-compeirance, against tutors & curators allanerly. And gif the persone being *minor*, having na curator nor curatours, sall have their remeid to be restored in *integrum*, as accordis of the Law, upon reasonable cause proponed to that effect.<sup>132</sup>

<sup>131</sup> This act has been referred to in the case of Blair, M. 15,045, and in the case of Gordon, M. 15,050, as constituting the authority for holding that a donator of the Crown is not bound to pay a composition for an entry with the superior, as a singular successor.

<sup>132</sup> In reference to this act, see Erskine, iv. tit. iii. § 23, and Darling's Form of Process, p. 355.

11. *Writtes ordained to be registrat, necessarily suld nocht be sealed. Instrumentes of seasing ar valide, albeit they be nocht subscribed be twa Notares.*

THE Kingis Majestie, with advise of the three Estaites of this present Parliament, exponis and declaris, that the act anent the sealing of writtes of importance, is nocht to be understand of sik writtes, contractes, or obligations, as ar be the parties agreed upon, to be registrat in the buikes of our Sovereine Lordis Councel : or uther ordinar Judges, seeing the parties consents to registrat the same. Quhilk is ane greater solemne act, nor the sealing thereof. And that the non-sealing of the same, sall be na exception against the validitie of the saidis writtes, being subscribed be the parties, and agreed on, to be registrat, as said is. Quhilkis his Majestie and Estaites foresaidis, decernis to neede na sealles. Neither that the said act, anent the saidis writtes, to be subscribed be twa Notaris, sall be extended to instrumentes of seasing, quhair-unto ane faithful Notar, with ane reasonable number of honest & famous witnesses is sufficient. And this declaration to be observed as ane Law, in all times cumming.<sup>123</sup>

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### APUD LINLITHGOW,

I DIE DECEMBRIS, A.D. M,D,LXXXV.

1. *Authors of slanderous speeches, or writts, suld be punished to the death.*

IT IS Statute and ordained, be our SOVERAINE LORD, And the three Estaites, that all his Hienes Subjects content themselves in quietnes and dewtiful obedience, to his Hienes and his autoritie. And that nane of them presume, or take upon hand publickly to declaime, or privatly to speake or write ony purpose of reprocht, or slander of his Majesties persone, Estait, or government : Or to deprave his lawes and actes of Parliament, or misconstrue his proceedings, quhair-by ony mislyking may be mooved, betuixt his Hienesse, and his Nobilitie, and loving subjectes in time cumming, under the paine of death : Certifieing them that does the contrare, they shall be repute as seditious and wicked instrumentes, enemies to his Hienesse, and the commoun-weill of this Realme. And the said paine of death sall be execute upon them, with all rigour, in exemple of utheris.<sup>124</sup>

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### APUD EDINBURGH,

VIII DIE JULII A.D. M,D,LXXXVII.

6. *Punishment of troublers of the Kirk, invaders of Ministers, and of Excommunicat persones, entrand into the Kirk.*

OUR SOVERAINE LORD, with advice of his three Estaites, in this present

<sup>123</sup> This act is in force. The act here referred to is 1579, c. 18, which see, and the note annexed to it.

<sup>124</sup> This act is in force except as to the punishment, which is modified by 1703, ch. 4, 6th Geo. IV., ch. 47, and 7th Will. IV., ch. 5.

<sup>125</sup> The following act appears in the editions of the Scots Acts printed in 1597 and 1681, but not in Mr Thomson's edition :—

Parliament, statutis and ordainis, that quhat-sumever person or persones, sall happen hereafter, to perturbe the ordour of the Kirk, in time of Divine service, or to make ony tumult, raise ony fraie, either in Kirk or Kirk-zaird, quhair-throw the people then conveened, sall happen to-be disordered, troubled, or dispersed: The same sall be ane point of dittay, and the persons to be convict thereof, sall tye all their moveable gudes, to be escheit to our SOVERAINE LORD, for their offence; but prejudice of greater punishment, gif there happen ony greater offence, as slaughter, blood, mutilation, schutting of Hag-buttres and Pistoletts, according to the Laws of this Realme. And forsameikle as divers persones having committed sindrie offences, for the quhilk they merite to be separate from the societie of the Kirk; and zit seekis na reconciliation there-unto, bot for necessitie of *Baptisme* to their bairns, or mariage of themselves, or of their friendes, sum-times minacis and boastis the saidis Ministers, and sum-times for seeking of their livinges, or sick uther quarrelles, sparis not to put violent handes on them. FOR remeid quhairof, it is statute and ordained, be OUR SOVERAINE LORD, with advice of the saidis Estaites; That quhat-sumever person or persones, invaids ony Minister, or puttis ony violent handes in him, for the causes above expreemed, or ony uther sik forged quarrel, sall be punished therefore with all rigour, and incurre the paine of tinsel of all their moveable gudes, for the said invasion and violence allanerlie; Albeit na slaughter nor mutilation follow there-upon: The ane halfe of the saidis moveable gudes, to be applied to our SOVERAINE LORDIS use, and the uther to the partie offended; But prejudice of greater punishment, gif ony heigher crime concurre, with the violence and invasion foresaidis. And for the better execution hereof: It is statute and ordained, that all persones, delated of the saidis offences, sall be called and presented therefore criminallie, before the justice and his deputes, aither in Justice-aies, or at particular diettes. And that letters be direct to that effect in commoun forme, at the instance of the Minister, or the Kingis Advocate, or Procuratour for the Kirk, or ony uther that will persew the saidis offences. And quhair ony excommunicat persones enters in the Congregation, the time of the Ministration of the Sacraments, or commoun Prayers; The Minister being certified thereof, sall incontinent thereafter, charge the Excommunicate persone, in the name of GOD, and OUR SOVERAINE LORDE to depairt: Quhilk being refused, he sall after the Ministration of the Sacramentes, or commoun Prayers ended, require sae mony of the maist wise, discreete, and substantious of the Paroche, as he pleasis: That they, in OUR SOVERAINE LORDIS NAME, sall take and apprehend the said Excommunicate persone, and present him to the Judge Ordinar, within the boundes of the schire, quhair the Paroche lies, quhilk Judge Ordinar, sall be halden to receive the same Excommunicate person off their handes, and keep and retein him in prison, till he finde cautione, under sik summes as sall be modified be the Minister: And as monie of the Elders of that Kirk, as ar present for the time, or resortis to the oulklie assemblies: That the Excommunicate person reconcile himself to the Kirk, and sall make amendis for the said offense.

AND gif the Excommunicate person foresaid, deforcis ony of them in the execution of the premisses, he being convict thereof, his moveable gudes, sall fall in

“ 18. The narrest Agnat suld be curatour to Fooles, Idioties and furious Persones.

“ Our Sovereine Lord be advise of this present Parliament statutis and ordainis that the “ narrest agnates and kinsmen of natural Fooles, Idioties and furious persones sall be “ served, received and preferred according to the dispositions of the commoun law to their “ tutorie and curatorie.”

The act is referred to in Erskine, b. i. tit. vii. § 50.

escheit to OUR SOVERAINE LORDE: And his persone sall be punished, at his Hienes will and pleasure.<sup>136</sup>

8. *Annexation of the Temporalities of benefices to the Crown.*

OUR SOVERAINE LORD, and his three Estaites of Parliament, perfitley understanding the greatest part of his proper rent, to have bene given and disponed of auld, to Abbaies, Monasteries, & utheris persons of Clergie: quhairby the Crown hes bene sa greatlie hurt, that thereafter his maist Noble Progenitours had nocht sufficient means to beare foorth the honour of their Estaites, as they had before, quhilk hes bredde sindrie inconvenientes within this Realme. And seeing the causes of the dissolution of the patrimonie of the Crown to the Kirk, after the trueth knawin, ar found nathar necessar nor profitable: And that be manie ocasioness, through a lang processe of time, the dearth hes sa greatlie increased, not only in this Realme, Bot in all Cuntries, that the Princes charges, ar not able to be uphalden be that part of the patrimonie, quhilk now restis in his handes: And his Hienes for the great love and favour quhilk he bearis to his subjectes; being na waies minded to greeve them with unprofitable taxations, specially for his royal supporte. It is founde maiste meete and expedient, that he sall have recourse to his awin patrimonie, disponed of before (the cause of the disposition now ceasing) as ane helpe maist honorable in respect of himselfe, and least grievous to his people and subjectes.

AND THEREFORE Our said Soveraine Lord, and his saidis three Estaites of Parliament, be the force of this present Acte, have united, annexed and incorporate, and unitis, annexis and incorporatis, to the Crowne of this Realme, to remain therewith as annexed, and as it were propertie thereof, in all time cumming, and with our said Soveraine Lord, and his Successours for ever; All and sindrie Landes, Lord-shippes, Barronnies, Castles, Towres, Fortalices, Mansions, Manour places, Milnes, Multures, Woodies, Schawes, Parkes, Fischinges, Tounes, Villages, Burrowes in Regalitie, and Barronnie, annual-rentes, tennentes, reversiones, customes great and small, few-fermes, tennents, tennendries, and service of free tennentes. And all and sindrie utheris commodities, profitess and emolumentes quhatsumever, alswell to Burgh, as to lande, (except, as hereafter sall be excepted in this present Acte) Quhilkis at the day and dait of thir presents, viz. The xxix. day of Julij, the zeir of Ged, 1587. zeires, pertainis to quhatsumever Archbishoppe, Bischope Abbot, Prior, Prioress, & quhatsumever uther Prelat, either Ecclesiastical, or beneficed person, of quhatsumever estaite, degree, high or lawe, and at the day and dait of their presentes pertainis to quhatsumever Abbay, Convent, Cloister, quhatsumever ordour of Friers, or Nunnes, Monkes or Channones, howsumever they be named, & to quhatsumever Colledge Kirk, founded for Chantorie and singing; Or to quhatsumever Prebendarie or Chaplanrie quhair-ever they be, or be situate within this Realme and dominion thereof. And sic-like, all and sundrie commoun landes, bruiked be Chaptours of Cathedral Kirkes, and Ohantrie Colledges as commoun; And quhairof the saidis Chaptours have bene in possession before in commountrie, to be in all times hereafter, taken, halden and repute, as it were the propertie and patrimony of the Crown, to remaine therewith in all times cumming, after the forme and tenour, and ordour of the Act of annexation, maid in the time of our Soveraine Lordis maist Noble Predecessour, King JAMES the Second; And according to all clauses, conditions, and circumstances thereof, quhilk in all pointes is halden for expressed in this present Act. And

<sup>136</sup> This act contains the original provisions against the disturbance of public worship, and the invading of ministers. It was ratified by 1633, ch. 77. See Hume, vol. i. p. 572.

als it is statute & ordained, that the execution of this act, in levying and up-taking of the profites, sall begin and take effect, at the terme of *Martino-mes* nixt to-cum : That our said Sovereine Lord, may receive the rentes and dewties of the said terme, and swa foorth to continew in time cumming.

Taxation.

And because it is nocht reasonable, that after the said annexation of the said Temporal landes to the Crown, the saidis Prelates and Ecclesiastical persons be burdened with ony taxations, for, and in respect of the saidis annexed landes, his Majestie, and his Estaites of this present Parliament, hes remitted the ordour to be taken for their relieve in that behalfe, to certaine persones to quhom the ordour of the general taxation of all landes within this Realme is committed. Quhilk ordour to be taken, sall be observed in all time cumming, and the heritable possessours of the saidis landes, and utheris addebted in taxationes, sall pay their taxt, according thereto.

Warrandise.

AND Further, it is declared, decerned, statute and ordained, be our said Sovereine Lord, and his saidis three Estaites of Parliament, that in-case ony of the saidis Prelates or persones Ecclesiastical, quhais Temporal landes ar properly comprehended in the said annexation, sall be hereafter called and presented, at the instance of quhat-sumever persones, for warrandize of ony of the saidis Kirk-landes, sett in few, or takke be them, or their predecessours to divers persones, be occasion of double infestmentes, or assedationes : or for quhat-sumever uther cause, they, and their successours sall na waies bee obliged to warrand the same, bot for their awin deed : to wit, quhair the warrandize proceedis, and takis occasion upon double infestmentes, or assedationes of ane land, baith proceeding from ane person disponet thereof, zit on live ; in quhilk case allanerlie, they sall be obliged, as said is.

Persones convict of barratrie & restored.

IT IS Alswa concluded, statute and ordained, be our said SOVERAINE LORDE, and his thre Estaites of Parliament, that the said annexation sall have full strength, force and effect, in all Lordschippes, tennendries, Baronnies, and uther Temporal Landes, quhilk pertained to ony Prelacie, or uther Benefice, possessed before, be quhat-sumever Prelate or Ecclesiastical person, against quhome processe of fore-faltour, or Barratrie hes been led at ony time, sen our said Sovereine Lordis Corronatioun ; Albeit they have bene in ony Parliament before, or sall be now in this present Parliament, or hereafter fullelie restored against the saidis sentences, and processe, and their restitution sall have na effect, against the said annexation : bot the said annexation, sall have effect against them, notwithstanding the said restitution.

Fewes to be set be the King.

IT Sall be alwaies lauchful to our said Sovereine Lord, in his awin time, to sett in few-ferme, quhat-sumever the saidis Kirk-landes quhilkis were not sett in few-ferme before, gif ony be. And sik-like, gif ony infestmentes of few-ferme of the saidis landes, now annexed, quhilkis were sett in few-ferme before, sall happen to be reitreit and reduced, for the reasones and causes hereafter expressed : Quhairin his Hienes and his Successours, sall onely be heard to quarrel and claim. It sall be lauchful to his Hienes in his awin time, as said is, to sett the same in few-ferme, notwithstanding the said annexation. And to the effect foresaid, the said provision sall serve for a sufficient dissolution in that behalfe, and his Hienes, and his three Estaites foresaidis, dissolvis the same in that part.

Dissolution.

Exceptions.

AND Sik-like, it sall be lauchful to our said Sovereine Lord, to use the superioritie and few-fermes of the landes of *Tullois*, the milne of *Craquhy*, millandes and sucken of the same : The landes of *Corstoun* quhilkis pertained to the Abbacy of *Aberbrothock*, lyand within the Schireffe-dome of *Fore-fare*, and Regalitie of *Aberbrothock*, as sall seeme gude to his Hienes. And that the conversion of the victual in money, or diminution of the rental, sall be na cause of reduction of the

infestment, the said annexation, or ony clause, or condition therein contained notwithstanding.

FURTHER, Our said Sovereine Lord, and his saidis three Estaites of Parliament, hes declared, and be the tenour hereof declaris, decernis and ordainis, that the Landes, Lord-shippes and Barronnies under-written, erected be his Hienesse in temporal Lord-shippes and Barronnies, before the dait of this present Acte, quhilk is the xxix. day of *Julij*, the zier of God, 1587. zeires, ar not, nor sall not be comprehended in the said annexation : excluding the same alluterly their-fra, to remaine with the persons to quhome they were first disposed, after the forme & tenour of their infestments, maid to them theirow. They ar to say ; The Lands, & Lord-shippes of *Torphihin*, The Eriedome of *Gowrie*, The Lord-shippe and living of *Deir*, now called the Lord-shippe of *Altrie*. The Lands & Barronnies of *New-bottle*, with the uther landes annexed thereto : The Barronnies of *Brouchton & Kerse*, the Burgh of the *Canongate*, & ane part of the Town of *Leith*, the Barronie of *Alhammer*, alias called *Quhite-Kirk* : Quhilkis of before, pertained to the Abbacie of *Halyrude-house*, The Landes and Lord-shippes of *Mussel-burgh*, quhilkis of before pertained to the Abbaie of *Dumfermeling*. Quhilkis landes and Lord-shippes ar disposed to diverse persones, as their particular infestmentes bearis : And als excepted the haill remanent landes of the Abbay of *Dumfermeling*, declared as zit to abide with the said Abbay, in the same estait, quharin they then were, and ar not comprehended in the annexation foresaid : Bot to remaine with the said Abbay, in the same estaite, quharin they then were, and ar not comprehended in the annexation foresaid. Bot to remaine with the said Abbay, quhil forder ordour be taken. As alswa excepted foorth of the said annexation of *Kirklandes* to the Crown : The infestment of the Temporalitie of *Paislay* : And the Priorie of *Phuscarden*, and temporalitie theirow. It is alwaies provided, and our said Sovereine Lord, with advice of his saidis three Estates in Parliament, declaris, that notwithstanding the said annexation is appointed to take effect in maner foresaid, At the Feast of *Martine-mes* nixt to cum : Nevertheless JOHN Lord HAMMILTOUN, Commendatar of the Abbacie of *Aberbrothock*, sall bruik the fruites, profites and dewties of the said Abbaie, during his life-time, in the same maner as he did before. Except the profites of the lands of *Craquhy*, and milne thereof, the landes of *Tullois* and *Corstoun*, few-fermes, and dewties of the same ; For the quhilk he sall be recompensed, according to the general ordour to be taken with the remanent Ecclesiastical Persones, quhais rent is paired, be the said annexation, according to the Act and ordinance maid there-upon.

IN LIKE MANER, OUR SOVERAINE LORD, with advise of his saidis three Estaites, ratifies and appreevis the gift and disposition maid be his Hienesse to *John Bothwell* sonne lauchful to *Adame*, Bishoppe of *Orkney*, of the Abbacie of *Halyrude-house*, and haill fruites thereof, with the haill freedomes, jurisdictions, liberties, rentes, proventes, and emolumentes of the same, with the haill reservationes, clauses, conditiones, and circumstances of the same, after the tenour thereof ; As the same of the daite, the tenth day of *December*, the zeir of GOD, 1582. zeires bearis ; Declaring the same to be sufficient and vailzeable to him, for bruiking and using of the said benefice and haill fruites thereof, induring his lifetime.

Notwithstanding, quhat-sumever Actes, constitutiones or Lawes, Civil, or municipal, maid in the contrair, dispensand there-with, and effect theirow ; And that this present ratification, be als sufficient, as gif the said gift and disposition had bene excepted in special, in the saidis Actes, or ony of them. And this alwaies to be without derogation of the Acte of annexation, of the temporalities of Benefices to the Crown : or of quhat-sumever richtes and titles maid be them, or ather of them, in favour of quhat-sumever persones, quhilk be this, his Hienesse meanis



nawies to prejudice : Bot the same to stande ratified and appreeved, in their full strength and force, as gif they were speciallie mentioned herein.

**Teindes.** IT IS Alwaies understand, like as our said Sovereaine Lord, and his three Estaites declaris, that under the said annexation or ony clause herein specified : the teind scheves & uthers teindes of quhat-sumever lands, within this Realme pertaining to ony Personage or Vicarage, ar not, nor sall not be comprehended : Except quhair the teind and stok is sett togidder, as is hereafter declared ; Bot that the same sall remaine with the present possessour, having richt thereto, and quha sall have richt to the same hereafter : Notwithstanding the said annexation, or ony general clause therein specified, quhilkis sall nawaies be extended to the saidis tennendes, mair nor gif the said annexation had na waies bene maid.

**Prelates houses.** Reservand alwaies, & except and to all Archbishoppes, Bishoppes, Abbotes, Priores, Prioresses, Commendatars and uther Prossessores of great Benefices, of the estait of Prelates, and quhilkis before had, or hes voite in Parliament, their principle Castles, Fortalioes, houses and mansiones, with the bigginges and zairdes thereof, as they lie and are situate within the precinctes and clausures of their places, quhilkis sall remaine with them, and their successoures hereafter, for their residence and habitation. Notwithstanding the said annexation, quhik sall na waies include the same ; But the same Castles, houses, mansiones, and utheris immediatlie before rehearsed, sall abide in the same Estait, quhairin they were before the said annexation, but prejudice or hurt to be meaned or intended to the saidis Prelates, or ony uthers persones, that they may have or justlie pretend richt thereto, Providing alwaies they keepe and maintaine the same, in the estait quhairin they presently ar.

**Glebes and Mansiones.** EXCEPTAND alswa fourth of the said annexation, all and quhat-sumever mansiones of Personages & Vicarages annexed to Paroche Kirkes with four aikers of glebe, maist ewest to the Kirk, and commodious for the Minister, serving the cure theirof, for his better residence there-at, quhilk sall not be, nor ar comprehended in the said annexation : Bot sall remaine with the Minister, Person or Vicar, or uther quha sall be provided thereto, for serving of the cure, according to the Actes of Parliament maid there-anent of before.

**Colledges. Schooles, Ministers within Burgh.** EXCEPTAND in like maner, all and sindrie landes, profites, tenandries, annual-rentes, teind-scheves, and uther commodities and profites quhat-sumever, given, granted and disponed for interteinement of Masters and studentes in Colledges, erected for exercise of learning, and for *Grammer* Schooles, and for sustentation of Ministers, Makand their residence in Burrowes, quhair their is na uther stipend appoynted to them,

**Hospitalles and Maison-dieus.** AND sik-like, exceptand and reservand, all landes, tenementes, profites, annual-rentes, & commodities quhat-sumever, granted before the dait hereof, be our Sovereaine Lord, or quhat-sumever his Hienesse Predecessoures ; Or be quhat-sumever utheris persones, to ony Hospital or Maison-dieu, within this Realme ; And that in favoures of the Puir and needy : Providing that the same be not disponed nor applied to ony uther use.

**Laick patronages.** AND Finallie, exceptand and excludand fourth of the said annexation, all Landes, Barronnies, tenementes, annual-rentes, and utheris commodities quhat-sumever, quhilkis pertained of before, to quhat-sumever Benefice, great or smal, being of laick patronages. To the quhilk the said annexation sall nocht be extended, nor comprehend the same : To the effect that nane of the saidis laick patronages be hurt nor damnified thereby.

**Superiortie.** AND Notwithstanding, the said general annexation of all Landes, Lord-shippes, Barronnies, tenementes, annual rentes, and utheris commodities above specified (except before excepted) to the Crown of this Realme, to remaine therewith, as it

were proper Patrimonie thereof in all time cumming: it is be this present Acte speciallie provided, that quhen the saids landes, and uthers above specified, or ony part or portion theirof, great or small, are sett in few, ferme, takke & assedation: or ar disposed in free tennendrie, in blanch cane, or for service of wairde & reliefe, or uthers waes, as may stand and agree with the Lawes of this Realme: The saidis heritable free tennentes, fewares, takkes-men & uthers righteous titulares thereof, sall bruik & enjoy their Landes, Lordshippes, Barronnies, tenementes, annual-rentes, & their uther rights & titles quhat-sumever, after the forme & tenour of the same in all poynts: And our said Sovereine Lord, and his Hienesse Successoures, sall be hereafter immediat superior to them: Likeas they sall becum, be vertew of this present Act, immediat tennentes and vassalles to his Hienesse, and their successoures, in their saidis Lord-shippes, landes and tenementes, for payment of the dewtie and service, contained in their infeftmentes, takkes and assedationes, and uthers richtes and titles theirof; in the same sort and maner, as they might have bene oblished to the saidis Ecclesiastical persones, and na uther waies. And that be the same infeftmentes, takkes, richtes, and titles, quhilkis the saidis possessoures hes of the same: They sall bruik, joys and possesse their saidis landes. And it sall not be necessar to them; to alter their saidis infeftmentes and richtes: Nor to take the same of new of OUR SOVERAINE LORD, Notwithstanding the translation of the superioritie in his Hienesse.

AND Because there ar divers pensiones, granted to mony persones forth of Pensiones. the saidis annexed landes, alsweil be the saidis Prelates, and uthers Ecclesiastical persones, as be OUR SOVERAINE LORDE, the benefice vaikand in his Hienes handes, ather throw decease, or be processe of fore-faltour or barratrie, led against the possessour of the Benefice, OUR SOVERAINE LORD, and his saidis three Estaites of Parliament, decernis, and declaris: That the saidis pensioners, sall na waies be hurt nor prejudged in their saidis pensiones (they being lauchfullie provided thereto) be the said annexation. Swa that the saidis Pensioners have bene authorized be decretes of the Lordes of Councel, or uther judges ordinar: Or have bene in lauchful possession of their pensiones, at ony time preceding.

IT IS Alwaies declared and decerned, be our Sovereine Lorde, and his saidis <sup>The entering of aires.</sup> three Estaites in Parliament; That in all & sindry Landes, Lordshippes, tenementes, annual-rentes, uthers profitis & commodities quhat-sumever, properly comprehended in the said annexation: Our said Sovereine Lord, and his Successours, sall have the only and full richt of the superioritie of the tennendries, sik-like, and in the same maner, as the saidis Ecclesiastical persones had the same of before. And that the aires of the present heritable possessoures in all time cumming, sall enter be Brieves of our Sovereine Lords Chappel allanerly: quhilkis brieves, sall be direct to the Schireffe of the Schire quhair there was na Regalatie before. And quhair there was ony Regalatie quhilk hes now ane heritable Baillie or Stewart, the same sall be directed to the said Baillie or Stewart and their deputes. After the service of the quhilk brieve, the samen being retoured to OUR SOVERAINE LORDS Chancellary, quhidder the saidis landes lie in Royaltie, or Regalatie; The partie sall have precepts to be seased, halden of our said Sovereine Lord according to his retour, be the same conditiones, as our said Sovereine Lordis uthers tennentes have bene seased be preceptes, direct furth of the Chancellary of before, in the quhilk precept commandement sall be given, to the Schireffe, Stewart or Baillie, to whom the same sall be directed, to take securitie for the dewtie awand to our said Sovereine Lord, as the cause sall require be the retoure; As the custome hes bene in the Kingis tennendries in times by-past.

Reduction  
of infeft-  
mentes.

AND BECAUSE OUR said SOVERAINE LORDE, and his Successoures, ar decerned and declared be the tenour hereof, to have the full richt to the superioritie of the saidis tennendries of Kirk-landes : IT IS THREFORE statute and ordained, that his Hienesse and his Successoures, sall have sufficient richt, action and interest, for compelling of all and sundrie the saidis tennentes, now presentlie being, and their aires and successoures that sall be for the time ; To pay the dewties, and do the services contained in their infeftmentes, in all time cumming. AND in-case the clausses and conditiones of the saidis infeftmentes, be contraveened, his Hienesse and his Successoures sall have Action to retreit and reduce the saidis infeftmentes, according to the clauses, conditiones and restrictiones specified theirin ; of ony fault, offense, or contravention, that sall be done, or committed in time cumming allanerlie. And his Hienesse and his Successoures, sall not have action, title, power or richt, to call ony of the saidis infeftmentes or takkes and assedationes of ony of the saidis Kirk-landes, quhilkis ar maid be them quha had power to make the same, or ony richt or title depending thereupon in question : Nor zit to persew the reduction, annulling or expyryng thereof : Nor zit sall his Hienesse, nor his Successoures have ony manner of Action, richt or title, to retreit, reduce or annul, quhat-sumever infeftmentes, of the saidis Kirk-landes, dewlie and lauchfullie confirmed be him or his Predecessoures, for diminution of the rental : Swa that the said diminution be nocht of the auld penny-maill, *de liquido ad liquidum* : And his Majestie and his Successoures, sall nawaies be heard to quarrel the saidis infeftmentes of few-ferme, for conversion of the victual in silver deutie : Or for ony uther reason or cause of nullitie, invaliditie, lesioun or hurt : Or be reason of quhat-sumever Law, Cannon, municipal, statute or constitution : Except in the causes forsaidis, for none-payment of the saidis deuties, and dew services in time cumming : According to the restrictiones contained in the said infeftmentes.

AND ALS Except, and quhair OUR said SOVERAINE LORDE, and his Successoures, may have querrel, or imprieve the saidis infeftmentes, gif ony of them be fals and feinzied : In the quhilkis causes allanerly his Hienesse and his Successoures, sall have place to persew, and be the tenour of this present Acte, ar, and sall be expresslie and continuallie excluded fra all uther action, cause and persute, except the causes foresaidis.

The fewares  
sall bruik  
their lands  
conforme to  
their infeft-  
ment.

AND Mairover, our said Sovereine Lord, And his three Estaites in Parliament, for the greater assurance to the saidis fewares and free-tennents, declaris that it sall not be lesum to him nor his successoures : And that his Hienesse nawaies means nor intends, directly nor indirectly, to harme or prejudge, the saidis fewares and free tennentes, their aires and successoures in their roumes and possessiones, pertaining to them for ony cause, except for the special cause above excepted ; Bot that they sall bruik their saidis landes, fewes and tennendries, as freelie in all respects, for payment of the deutie, and service contained in their infeftmentes : as onie his Lords, Barronnes, fewares, and free-tennentes, quhilkis was immediat vassalles of auld, hes bruiked and joyseed their saidis landes and heritages : Or presently bruiks or joyis the same, but ony difference hereafter.

Fewes sett  
cum deci-  
mis inclu-  
sis.

AND because the teind-scheeves, and uther small teindes of all landes within this Realme, ar expreslie excepted foorth of the said annexation, and the same na wayes extended thereto. And thereby it is considered, that question may fall out, anent the payment of the few fermes of the Kirk landes, to our Sovereine Lord, quhair in ane infeftment, the landes & teindes is set togidder for ane dewtie ; And but division or distinction, how meikle sall be payed for the said land, and how meikle for the teind : quhilk may seem hurtful to sik as hes the landes sett to them, with the teindes included : And to the Ecclesiastical Persones, to quhom

the teindes ar reserved. FOR Avoyding of the quhilk question; our said Sovereine Lord, and his saidis three Estaites of Parliament, decernis and declaris, statutis and ordainis, that the comprehending of the saidis teindes, and including the same with the Landes, sall na waies bruik OUR said SOVERAINE LORDIS superioritie foresaid: Bot his Hienesse sall remaine superiour to the hail tennendrie, stock and teinde, after the forme of the infeftmentes. And that the richt of the said infeftment, sall stande indivisible, sa farre as concernis the halding and tennendries. Bot the said Ecclesiastical persone, sall have action and richt to the tenth-penny of liquidat mailles, contained in the said infeftment. And the uther nine partes theirow, sall perteine to OUR SOVERAINE LORDE: And this to be nocht onlie of the penny-maill, but of all uther dewties, that suld be payed for teind and stock; To witt, that nine partes theirow, sall perteine to OUR SOVERAINE LORDE: And the tenth-part be just estimation, sall apperteine to the said Ecclesiastical Person. And that all the Judges and Ministers of his Lawes, within this Realme, Judge and decide according to this statute and na utherwayes, how oft as that question sall be moved upon the case fore-said.

AND Forsameikle, as there is diverse Burrowes in Regalitie and Barronie, within this Realme, quhilks were before halden immediatlie of the saidis Prelates, and have bene in use to exerce the trade and trafficque of merchandise: To make Burrowes of Regalitie & Barronie. Burgesses, and to elect Provostes, Baillies & uthers Officers, meete & necessar for the government of their Communities; Our said Sovereine Lord, and his saidis three Estaites in Parliament, na wayes willing that they sall be hurt therein, declaris, decernis, and ordainis, that they sall remaine in the same freedom and libertie, quhilk they had before the said annexation, to be halden alwayes of our said Sovereine Lorde, in the same maner and condition, be the quhilk they held their saidis liberties of the saidis Ecclesiastical persones before, and na-waies hurt in their richtes and priviledges. And that the ane sort & the uther be not confounded be this present Act, bot remaine alwaies distinct, as they were in time by-past: notwithstanding the said annexation. It is alwaies provided, statute and ordained, that the Provost, Baillies, Councel and utheris Officers, within the said Burrowes, in Regalitie and Baronie, quhair they were Provost and Baillies of before: sall be zeirly elected, chosen, deposed, and altered, according to the forme & tenour, of the actes of Parliament, maid in the daies of our Sovereine Lordis maist noble predecessoures, and ratified in divers Parliaments, sen his Hienesse Coronation.

Forder, the saids Burrowes in Regalitie, & Barronie, & all lands, tenementes, Annual & annual-rentes, within the libertie of the same, quhilks were halden of the said Ecclesiastical persones before, sall fra this present be halden of our said Sovereine Lord, and his Successours in chiefe, and the aires sall be entered thereto, be our said Sovereine Lords Brieves, to be direct to the saidis Provost and Baillies, of the saidis Burrowes: and the service sall be retoured to his Hienes Chancellary. Upon the quhilk retoure, the Director sall deliver ane Precept, in competent and dew forme, with provision of securitie, to be taken for the mailles and dewties of the saidis landes and annual-rentes, as they sall be retoured: Because the saids Burrowes, are not his free Burrowes Regal, and were not relived of their non-entries, at the hands of the saidis Prelates, their superiors, in times bypast: Aud quhair the Prelate received resignation, or gave entries; That the Kingis Majestie sall give it now be ordour of his Chancellary, and quhair the power was in the handes of the Baillies of the Burrowes within Regalities, that they bruik and enjoy their richt and priviledge, as of before.

AND Because the saidis landes, Lordshippes, and Barronies, quhilks before Heretable pertained to the saidis Archbishoppes, Bishoppes, Abbotes, and utheris Prelates: Baillies & Stewarden.

There is diverse our Sovereine Lordis lieges, constitute heretable Bailies and Stewardes of the saidis Lordshippes and Regalities: Quhilke heritable Bailies and Stewardes, our said Sovereine Lord intends not to hurt, be the said annexation. Therefore our said Sovereine Lord, and his saidis three Estaites of Parliament, declaris, decernis, statutis and ordainis, that the said heritable Bailies and Stewardes, and their aires and successors, sall now and hereafter abide & remaine in their richt and title, quhilke they have of the saidis Offices, except in the change of their superior, in our Sovereine Lord and his Successours, quhilke in all time hereafter sall be their immediat superiour. Like as the saidis heretable Bailies and Stewardes sall be their immediate tennents, & vassalles of their saidis offices: after the forme & tenour of their infeftments, & for doing of the service specified in the same.

Their jurisdiction.

Further the saidis heretable Bailies and Stewards, sall notwithstanding the said annexation, have the same libertie, power, and jurisdiction, quhilke they had before in actiones and maters Civil: And be the said annexation, there sall na furder power, jurisdiction or authoritie, appertene to our said Sovereine Lordis Schireffes, nor accresce unto them: Bot their said power and jurisdiction, sall remaine in the same Estait, limited as the samin is, at this present, according to the auncient Lawes, and consuetude of this Realme.

AND Furder, the said heritable Stewart or Baillie of the said Regality, sall have the same power quhilke he had before, to replege from the Schireffe or his deutes, in all causes and actiones criminal or Civil, quhair replegiation was granted of before; And gif the said Schireffe and his deutes refusis to admitte the said replegiation, he and his deutes sall be punished therefore, and his processe led in the contrair sall be of nane availle. And in causes criminal, the said Baillie or Stewart of the Regalitie, sall be judge competent in all maner of crimes, quhairin the Lord or Baillie of the Regalitie was accustomed to be Judge in times by-past. And albeit our Sovereine Lordis Justice general, Lieu-tenant, or Justice in that part, be special commission, summond the offender, indweller of the Regalitie, to compeir before them, to underly the Law for the crime, for the quhilke he sall be delated; The said Baillie or Stewart of the Regalitie, sall have power to replege fra our said Sovereine Lords Justice aforesaid, to his awin court; in case he have prevented be apprehending of the offenders person; or be his Summoundes, first directed and execute against the offender, before our said Sovereine Lordis Justice, apprehended the person suspected or delated for the offense and crime: Or execute summoundes upon him, to underly the Law therefore. Bot our said Sovereine Lordis Justice general Lieutenant, or commissioner sall be Judge competent, incase of prevention upon his part, be the apprehension of the trespassour, or first execution, of the summoundes against him, and in that case the said Baillie and Stewart of Regalitie, sall have na power to replege; Bot gif he pleasis, he sall be adjoyned to the Kingis Justice, and Judge with him. And incase of conviction, the said Baillie and Stewart heritable assistand to the judgement, sall have sik part of the escheit, as he may claime be vertue of his Office, and infeftment given to him there-upon. And it is alswa decerned, statute and ordained, that na Baillie nor Stewart heritable, of ony Regalitie, sall hereafter be heard to replege fra our said Sovereine Lordis Justice air, halden be his Justice general: Bot he sall be adjoyned, gif he pleasis, to the Kingis Justice, and sall have sa-meikle of the unlaw and penaltie of the persones delated, as he aucht to have be the richt of his infeftment.

Of weirefare and weapon-schawinges.

IN Like maner it is statute, that in all hostes and armies, the inhabitantes of the landes within the saidis Bailleries and Stewardries, sall be under the commandement of the saidis Bailies and Stewardes heritable, in sik maner as they

were wont to assemble, with the saidis Prelates and Baillies, in time by gane. As als sall give musters at their weapon-schawinges before them, according to the Acte of Parliament, under the paines contained therein, to be up-lifted to the saidis Baillies and Stewardis use.

And Mair-attour, it is speciallie provided, that notwithstanding of the annexa- Exceptions- tion of the temporalities of benefices to the Crown: Zit the conventual brether, of the Abbay of *Dumfermeling*, sall na wayes be prejudged and hurt anent their Livings, Portiones, pensiones, zairdes and dewties of the said Abbay: Bot that they and everie ane of them may peaceablie bruik, joyis and uplift their portiones, pensiones, livinges, zairdes and deuties of the same Abbay, during their life-times; Conforme to their giftes special assignations thereof, and to OUR SOVERAINE LORDS ratification & confirmation there-upon in all poyntes.

THE Quhilk day, OUR SOVERAINE LORDE, sittand in judgement in plaine Parliament, be his declaration maid in presence of his three Estaites, saved and reserved to himselfe, libertie and priviledge to except and reserve fourth of the Actes of the annexation of the Temporalities of benefices to the Crown, of the dissolution of the temporalities annexed, of his hienes revocation general, and of the ratification of the pacification, and abolition, all sik persones, causes and matters, and with sik provisiones, limitationes and restrictiones, as to his Majestie sall seeme expedient. Quhilkis his Hienesse ordainis and commandis his Clerk of Register, to insert and incorporate within the bodies of the saidis Actes. The samin exceptiones and reservationes being delivered to him, subscribed be his Hienesse, and his Chancellor, before the fifteenth day of August nixt-to-cum.

AND Further, OUR SOVERAINE LORD, According to the libertie and priviledge saved to himself, sittand in Judgement, in plaine Parliament, hes excepted fourth of the said general annexation, the Temporalities of the Abbacies of *Coldinghame*, and *Kelso*, and Celle of *Lermahago*: Declaring them as zit to remaine with the saidis Abbsies and Celle, in the samin estate, quhairin they then were. And that they were not comprehended in the annexation foressaid: Bot to remaine with them quhill furder ordour be taken. And hes declared, that it sall be lauchful to his Hienesse, to use the superioritie and few-fermes of the landes of *Lethome*, lyand within the Schireff-dome of *Fife*; Being a parte of the Patrimonie of the Bischopprick of *Saint-Andrewes*; All and sindrie the landes and utheris, after specified, quhilkis ar ane parte of the Patrimonie of *Lincluden*: They ar to say, the five marke-lande of little *Dryburgh*: The five marke-lande of *Drumjarg*: The five marke-land of *Ernphillane*: The five marke-lande of *Ernecrage*: The five marke-land of *Blarome*: The five marke-land of meikle *Dryburgh*: The five mark-land of *Chapmantoun*: The five mark-land of *Blackerne*: The five mark-land of *Erneminzie*: The five mark-land of *Culnotrie*: The corne milne of *Cors-Michael*: The five marke-land of *Garrantoun*: The twa mark-land and ane half of *Black-parke*: All liand within the Barronnie of *Cors-Michael*, and Stewartrie of *Kirkcudbright*. The fiftene schilling land of *Scaikfurde*: The fourtie schilling-lande of *New-toun*: The mark-land of *Clunie*, and *Skellingholme*: The sex mark-land of *Carrauchtie*: The sex mark-land of *Drumganis*: The five marke-land of *Troqueir*: The mark-land of *Stocholme*: The five mark-land of *Nune-land*: The five mark-land of *Cruif-stanes*: The sex mark-land of *Holme*: The twentie schilling land of *Maricholme*: The four mark-lande of *None-holme*: All lyand within the Barronnie of *Drumslait*, and Stewartrie foressaid. Togidder with all Castelles, Towers, Fortalices, Manour-places, houses Bigginges, Orchards, Milnes, Zairdes, Wooddes, fischinges, partes, pendickles, annexes, con-

nexes, out-settes, tennentes, tennendries, and fermes of few-fermes, canes, customes, services, casualties, and uther commodities quhat-sumever.

And gif it sall happen, OUR said SOVERAINE LORD, to dispone ony of the landes, Milnes, and fischinges of the said Provestrie, quhilkis ar not comprehended in the said annexation: Or quhilkis ar now excepted and reserved, as said is, and sall be hereafter dimitted in his Hienesse handes, be the Provest and Prebendaries theirof: THAT Gif his Hienesse converted the fermes, or victual in silver; The same sall be na diminution of the rental, or cause of reduction of the saidis inftmentes, to be maid thereof.

And als hes declared, and declaris, that it sall be lauchful to his Hienesse, to use the superioritie and few-fermes of the landes of *Lurg*, and *Kincardin*, with seventene aiker of land, quhilkis landes ar of the Abbacie and Lordshippe of *Culrossie*: And the preceptorie of SAINT-ANTONIS in *Leith*: And Chaplanarie of SAINT-JAMES, at the *New-haven*, landes, teyndes, and annuallies of the same, as sall seeme gude to his Hienesse. And Als declaris, that notwithstanding the said annexation, appoynted to take effect, in maner foressaid, at the Feast of *Martine-mes*, nixt-to-cum: That Maister ROBERT DOWGLAS, Provest of *Lincluden*, and WILLIAME DOWGLAS, Son to the Laird of *Drum-lang-rig*, his successour, sall bruik the fruites, profitis and dewties of the said Provestrie, during their life-times, in the same maner as they did before.

AND Alswa Ratifies and appreivis the provision maid to JAMES DOWGLAS, Sonne to the Laird of *Drum-lang-rig*, of the Provestrie of *Lincluden*, And that the act of dissolution, sall be extended in his favour, declaring the same provision to be sufficient, for bruiking and joysing of the said Provestrie, and haill profitis thereof: Notwithstanding, quhatsumever Actes constitutiones or lawes, Civil or municipal, maid in the contrair, dispensand therewith, and effect theirof.

AND SIK-LIKE Excepts foorth of the said annexation, The landes and utheris under-written, quhilkis ar an part of the patrimonie of *North-Berwicke*: They ar to say, all and haill, the place quhair the Abbey Kirk and Cloister of *North-Berwick* stude of before, quhilk is now ruinous, and was na Paroch Kirk. And als all and sindry the lands of the heuch of *North-Berwick-Law*, the *Law-meedow*. The milnes of *Kinkeith* with the croftes thereof, the uther four croftes of land, sum-time occupied be ROBERT HUME of *Heuch*, with their pertinentes, lyand on the *South* side of the Burgh of *North-Berwicke*. All and haill the *West* part of the Toun of *North-Berwicke*, called the *Nunne-gate*, lyand upon the *West*-side of the burne, called the *Clartie-burn* with all and sindrie Landes, tenementes, houses, Bigginges, out-settes, tailles, barnes, zairdes, and utheris pertinentes thereof. All and haill, the twa husband-lands in *Bone-stoun*, with their pertinentes. All lyand in the Schireffe-dome of *Edinburgh*, & Constabularie of *Haddingtoun*. All and haill the lands of *Montcreife*, the Landes of *Alderny*, The landes of the *Grange*, with their pertinents, all lyand within the Schireffe-dome of *Fife*, with houses, bigginges, mansiones, fortalices, zairdes, Orchardes, fermes of few-fermes, tennendries, pairtes, pendickles, and pertinentes, of all and sindrie the foresaids lands. Quhilkis his Majestie declairis, are not, nor sall not be comprehended in the said Annexation.<sup>137</sup>

29. *Quhen, quha, and how Notares suld be admitted, of their Cautioners and Protocol.*

FORSAMEIKLE As the Kingis Majesty and Estaites of Parliament, consi-

<sup>137</sup> This act is important in relation to the history of church property in Scotland.

In elucidation of it, see Erskine, b. ii. tit. x. § 19; and Connell on Tithes, vol. i. p. 100, et seq.

dering the great fraude used be diverse Notares, in the Office of Notarie, within this Realme, the hurte and skaith cumming there-through, to his Hienesse Liegis: and that mony persons within thir few zeires, being admitted to the Office of Notarie, with over slender tryall taken of their knowledge and qualification, and they being for the maist parte ignorant of the commoun course of the Law, forme and practicke: Quhilk ordourlie aucht to be observed in making of their instruments: contractes, and utheris writtes, titles and securities, nocht knowing quhat may stand be Law, ordour and practick, observed within this Realme, and quhat not: hes genered and daily generis mony ples: questions and controversies, amangst his Hienesse Lieges, bringing them in great trouble, charges and expences. FOR Remeid quhairof, it is statute and ordained, be his Majesty, with advise of the three Estates of this present Parliament, that all admission of Notares in time cumming, cease and stay for the space of five zeires, nixt after the date of thir presents: And that nane be admitted Notares thereafter; bot they that hes reasonable understanding in the *Latine* tounge, and is at the least congruous: That they have served and bene in company with ane of the Lords of Session, Commissares, writers to the Signet: Or sum of the Schireffe, Stewarde or Baillie Clarkes, of the Schire, or commoun Clerkes of the head Burrows of this Realme: And have served them trewly, the full space of seven zeires, and report their testimonial of their trueth and qualification, to be schawen to the Lordes of Councell, in time of their examination, quhilkis sall take care in the same examination bee their selves, or sum of their awen Clerkes of the Signet, quhom they please call to them for that effect. And specially, they shall cause the parties, desirous to be admitted Notar, give a present and full prooffe in their presence of his writing and congruity, be forming of sum evident; As charter of Ward, blench, fewferme, burgage, mortification, or apprising, or of ane precept past on ane retour, or of *Clare constat*, or of ane infestment of resignation, in favour *ad perpetuam remanentiam*: or sum instrument of seasing, or of ane contract, a compromit, a procuratory, a tacke, a reversion, acquittance, obligation, or sum uther commoun forme of evident. And nane to be admitted, bot by tryall and prooffe in maner foresaid; And quhairas diverse and sundrie Notares, hes bene admitted in time bygane, and caution found be them, conforme to the actes maid there-upon, and that the cautioners, quhilkis become caution for them, ar for the maist part deceased. It is statute and ordained, that the bands and actes of the saidis cautioners, sall extend against their aires: And that all Notares Within this Realme, sall bring and present their Protocoll buiks, before the Lords of Session, betuixt this and the first day of *Januar* nixt to cum; To be used and considered be the saids Lordes: That it may be knawin how monie of their Cautioners ar on live? And how monie deceased: And quhair they are deceased, or sall be found be the saidis Lordes to be insufficient, that uthers new and sufficient cautioneris, be founden in place of the Cautioneris deceased, to the contentment of the Lordes of Councell. And that sik Notares as sall be foundin altogether ignorant, and not wothie for using of that Office, sall be deprived of all using thereof in time cumming: And ordains the Shireffe of every Schire, Baillie of Regalite, their deputies and uther Judges ordinar quhat-sumever, to sende trew report and knowledge to the Clerk of Register, betwixt this and the first day of *November* nixt-to-cum, of all persons using the office of Notarie, within their boundes and Jurisdiction. And gif ony Notars failzie in presenting of their Protocoll buikes, to the effect under-written, that not onlie sall they be deprived fra their office, and all their Instruments quhilks they sall give foorth thereafter, declared null, & to make na faith: But alwa they sal be called & persewed, as transgressoures of his Majesties Laws & Acts of Parliament, and punished as persons defamed, and unworthie to bruiik



Office or place of credite thereafter. And farther ordainis, that ilk Cautioner, to be foundin be Notares in time cumming, for dew administration in their Offices, becum oblished in speciall, that their Protocoll buikes, within xv. dayes nixt after their decease, sall be brocht to *Edinburgh*, and delivered to the Clerk of Register, or ane of his deputes, appoynted be him to that effect, quha sall be halden to satisfie the relict, bairnes, or Executours of ilk Notar, for the same Protocoll, at the sight and modification of the Lordes of Session: And thereafter the saids Notaris buikes to be reteined and keeped in OUR SOVERAINE LORDIS Register. And the Clerk of Register, and his deputies, to be answerable therefore: And to make the same patent and fourth cummand to all OUR SOVERAINE LORDIS Lieges, having interest thereto, upon their reasonable expences.<sup>138</sup>

30. *Of the number of Officiares of Armes, their deprivation, their cautioners, and head Courtes, to be halden be the Lyon, King of Armes.*

OUR SOVERAINE LORD, And three Estaites of Parliament, considering how of late zeires, there is entred in the office of Armes, sindrie extraordinar Maissers, and Pursevants, and ane verie great number of Messengers, through importune sute of diverse parties, in sik a confused and incertaine maner, that it is become doubtfull quha ar admitted, and how, and quha deprived, or nocht: Or quhidder their cautioners be livand, or departed this life. And seeing there was alwayes in times of best government, a certaine number of Officiars of Armes: It is is now therefore thocht expedient, statute and ordained, that in time cumming, there sall be onely twa hundreth persones, wearand and bearand our Sovereine Lordis Armes, in the hail boundes of the Realme of *Scotland*: In quihilk number, *Lyon*, King of Armes, and his Brether, the ordinar Herauldes, Maissers and Pursevants, sall be comprehended, being in number xvij. persones, and the remanent to be divided amangst the remanent Schireffe-domes of the Realme, in maner following: That is to say, within the Schireff-dome of *Orkney* and *Zetland*, four: within the Schireff-dome of *Inverness* and *Cromartie*, ten: Within the Schireff-dome of *Narne*, twa: Within the Schireff-dome of *Elgin* and *Forres*, five: within the Schireff-dome of *Bamff*, four: Within the Schireff-dome of *Aberdene*, xij: Within the Schireff-dome of *Kincardin*, four: Within the Schireff-dome of *Forfar*, x: Within the Schireff-dome of *Fife*, x: Within the Schireff-dome of *Kinross*, twa: Within the Schireff-dome of *Clack-mannan*, twa: Within the Schireff-dome of *Perth*, and *Stewartries* of *Menteith* and *Stratherne*, xij: Within the Schireff-dome of *Strivling*, five: Within the Schireff-dome of *Dumbertane*, four: Within the Schireff-dome of *Linlithgow*, four: Within the Schireff-dome of *Edinburgh* principall, xxiv: Within the Schireff-dome of *Edinburgh*, and Constabulary of *Haddingtoun*, four: Within the Schireff-dome of *Berwick*, four: Within the Schireff-dome of *Roxburgh*, viij: Within the Schireff-dome of *Selkirk*, twa: Within the Schireff-dome of *Peblis*, iij: Within the Schireff-dome

<sup>138</sup> The previous statutes relating to notaries are the following, viz. 1469, ch. 6; 1503, ch. 8; 1540, ch. 11 and 13; 1551, ch. 17 and 19; 1555, ch. 18; 1563, ch. 18 and 17; the whole of which, with the exception of 1551, ch. 17, part of 1555, ch. 18, which is noticed in the observations annexed to it, and 1563, ch. 17, are superseded by the present act.

This act, so far as undischarged by 1617, ch. 22, along with A. S. 30th July 1691, constitutes the foundation of the forms presently observed in the admission of notaries. These forms are well described in the article "Notary Public," in Bell's Dict. and Dig.

The protocols mentioned in the statutes are still given to the notaries at their admission, but it is believed that very few notaries make use of them.

A seven years' apprenticeship is not now necessary for the admission of a notary.

of *Lanark*, x: Within the Schireffe-dome of *Renfrew*, iiij: Within the Schireffe-dome of *Argyle* and *Tarbert*, iiij: Within the Schireffe-dome of *Bute*, twa; Within the Schireffe-dome of *Air*, xij: Within the Schireffe-dome of *Wigtoun*, iiij: Within the Schireffe-dome of *Dumfreis*, and *Stewardries of Kirk-cudbricht* and *Annandail*, xij. And to the effect that the ordour now appoynted, may take the better effect; ordains and commands, *Lyon King of Armes*, that he on no wayes receive any maner of person, to the office of messengery in time cumming, except it be in the place of ane of the persons that sall be thought meete to be retained, after the first day of *November*, nixt-to-cum, be his decease or deprivation: Notwithstanding any precept or warrand given, or to be given in the contrair. Quhairin, gif he failzie, he sall incur the indignation of our Soveraine Lord, and the persons so admitted, sall have na place to use and exerce the said Office, nor his Executiones quhat-sumever, sall nawaies be valide in Judgement, or out-with. And for tryall quhilks of the persons now occupyand the Office of Messengery, are worthie and meet to be retained in that Office during their life-times. OUR SOVERAINE LORDE, ordainis letters to be direct to the Commissioners, nominat be his Hienesse, in the Schires, quhilks conveening in the Tol-buith of the said Burgh of the Schire, at the nixt head court after *Michaelmes* nixt-to-cum, sall returne their advise to the Lordes of Councell and Session, upon the first day of *November* nixt-to-cum: Quhat Messengers within every Schire, (not exceeding the number above written) they think maist honest, worthie, and able to be retained in the Office, during their life-times: Or quhill they be deprived for worthie causes. Quhilks persons, being thought meetest to be retained, as said is, sall be recommended be the saids Lords of Session to *Lyon King*, to be continued in their Offices, And authorized be him, with testimonials of new, as found worthie be the judgement of the Schire, quhairin they dwell, and recommended be the Lords of Councell and Session: And that they have new blasones of Silver, in ane forme and quantity, in ane honest and civill forme: seeing the commoun Arms, maid be Messengers in times by-past, wer sa slender and gude cheape: That the greater number of slichtmen sought to be admitted to that office, quhilk aucht indeede to be used be persons of discretion, honestie and credite: That every person so admitted of new, sall finde gude and responsible soverties for observation of the injunctiones, contained in the end of this present act, under the paine of five hundreth marks, to our Soveraine Lords use; with coastes, skaithes, damages, and interest of parties greeved be the falsed, negligence, or informality of any Officiar, That the names of the persones, alsweill admitted of new, as deprived, be published and imprinted, within the space of ane moneth, after the said first day of *November* nixt-to-cum: That nane sall be abused, or pretend ignorance in default thereof. And for all complaintes to bee maid to *Lyon King of Arms*, upon the default of Officaires in time cumming, he sall sett twa peremptour Courtes in the zeir, to be halden in *Edinburgh*, upon the sext day of *Maij*, and the sext day of *November*, gif they be lauchfull: and failzieng thereof, the nixt lauchfull daies. And sall summond the party compleined upon, be his precept, containand the cause of the complaint relevantly libelled. And cause summond the persones accused, and his cautioner, on fiftene dayes warning, and deliver their copies, concludand, in-case the Officiar be found culpable, nocht onely his deprivation fra his Office, but his Cautioner to incur the paine, quhair of the thrid part sall appertene to the said *Lyon King of Armes* for his labours. And that his Acts and Decreetes, be formallie written and registrat, and patent to all our Soveraine Lords Lieges havand interest. And sik-like Letters conforme to pass there-upon, as upon the decreetes of quhat-sum-ever Judges ordinar within this Realme.<sup>139</sup>

<sup>139</sup> The latter part of this act, which confers power upon the Lord Lyon to hold two courts

37. *Vnlauchfull Customes of victuall, and uther guddes ar forbidden.*

FORSAMEIKLE As ane of the speciall causes of dearth, proceedis from the exorbitant Customes and impositions, layed upon victualles, cornes and guddes, cummand to Mercattes, Free-portes or Havens, without ony warrand, and quhairof they have not bene in use and custome past memory of man, quhilk is ane oppression of the people, and ane cause of in-crease of dearth. THEREFORE OUR SOVERAINE LORDE, with advise of the three Estaites of Parliament, forbiddis & dischargis through the hail Realme, all sik customes and impositions, quhairof there is na warrand, neither have the intromettours and uptakers thereof, and their Predecessours, bene in use and possession thereof, past memorie of man. And ordains the takers of the saids exorbitant impositions to be called therefore: And quhat-ever they have up-tane, to be adjudged to rander the samin to the Kings Majesties use: And they further to be punished in their persones and guddes, as oppressours of the people; conforme to the Lawes of the Country: and that na custome be tane hereafter, but according to our auld Lawes and Actes of Parliament, and quhair-upon the up-takers hes speciall Warrand, at the least, bene in possession thereof, past memory of man, as said is.<sup>140</sup>

43. *Slayers of wilde-beastes, committes theft.*

OUR SOVERAINE LORDE, understanding that there hes bene diverse Actes of Parliament maid of before, anent the slaying of Hart, Hinde, Dae, Rae, Hares, Cunninges, and uthers Wild-beastes with Culveringes, Cros-bowes, and Hand-bowes: And specially the Actes maid in the Parliament, halden at *Edinburgh*, the zeir of GOD, ane thousand, five hundreth, threescoir seven zeires, and in *November*, 1581. zeires. Quhilkis Actes, hidderto hes tane na effect, and that in default of the Magistrates, quhilks were appoynted to put the same to execution. THEREFORE His Hienesse, with advise of his three Estaites of this present Parliament, hes ratified, and appreeved the saids hail Actes in all poyntes, passes, clauses and articles thereof, with this addition; That the slayers and schutters of Hart, Hinde, Dae, Rae, Haires, Cunninges, and uthers Beasts, without licence, or allowance of the awners, sall be like cryme to the committers, as the stealers of Horse and Oxen, and the committers thereof, sall incurre the paine and punishment dew to the cryme of theft.<sup>141</sup>

44. *The places appoynted for Proclamation, and serving of Brieves.*

ITEM, for the eschewing of sik hurt and inconvenient in time cumming, as sindrie parties heretofore hes susteined, throw Proclamation of Brieves at places doubtfull, and appoynting them to be served in places incertaine, far distant fra the head-Burrowes of the Schireffe-dome, quhair the Lands-lies, quhilk hes maist frequently occurred in sum Schireffe-domes, quhair there is sum uthers jurisdictions of Stewardries or Bailleries, within the bounds of the same Schireffe-domes, and sum Schireffe-domes, quhairof the head Burrows are decayed or fallen in disuse-

in the year, and gives him jurisdiction in complaints against messengers-at-arms, remains in force. See 1592, ch. 29; 1669, ch. 95; 1672, ch. 47; 1681, ch. 95; and regulations confirmed by Act of Sederunt 10th March 1772, which further relate to the powers of the Lord Lyon, See also Darling on "The Powers and Duties of Messengers-at-Arms," page 3, *et seq.*

The limitation of the number of messengers-at-arms for each county, is now obsolete. See Bankton, b. iv. t. vi. § 15, and note 1. annexed to Macallan's *Erskine*, b. i. t. iv. § 32.

<sup>140</sup> In reference to this act, see Cowan and Others v. Magistrates of Edinburgh, 22d Feb. 1828, 6 S. & D. 586.

<sup>141</sup> In reference to this act, see Hume, vol. i. p. 82.

tude. For remeid of the quhilk inconvenients and doubts in time cumming: It is statute and ordained, that all Brieves for service of lands, lyand within the bounds of the Stewardries of *Stratherne*, and *Menteith*, sall be proclaimed at the Mercat-crosse of *Perth*, and to be served at the places used and woont within the saids Stewardries. All within the Stewartrie of *Fife*, be open Proclamation at the Mercat-crosse of the Burgh of *Couper in Fife*. All within the Bailleries of *Kyle*, *Carriect*, and *Cunninghame*, at the Mercat-crosse of the Burgh of *Air*. All within the Stewardries of *Kircudbright* and *Annandaill*, at the Mercat-crosse of *Dumfreis*. And that the places of serving of Brieves, and halding of Courtes to that effect, be alwayes in the Tolbuith of the head Burgh of the Schire, Stewartrie or Baillierie, or uther pairtes within the same Stewardries, and Bailleries, quhair Brieves were maist usually served, and Courtes halden to that effect of before.<sup>142</sup>

54. *For the help and augmentatioun of the Kingis Majesties rentis in his thesaurarie and casualties.*

SEC. 7. ITEM, It is statute and ordained, that na relieves be componed for in time cumming: But the trew and full avail thereof, to be maid compt and payment of in the Checker. And in-case, Schireffes, Stewardes and Baillies, make not their compts, at the ordinar time of Checker (beside the ordinar execution, to passe against them therefore) That upon the sight of the buik of *Responde*, letters be directed, to charge the persons, to quhome precepts of seasing hes bene granted: Or the Schireffe and his deputes, at the option of the Thesaurer, or baith; To pay the summes contened in the *Respondees*, or to poynd the Schireffe, or the party: gif the party have not the Schireffs discharge thereof, to schaw and produce.

SEC. 8. ITEM, It is statute and ordained, that all Schireffes in time cumming, make compt to the Checker, of quhatsum-ever escheittes, up-taken and introneted with bee them, within their jurisdiction: And that ilk Schireffe charge himself specially with the samin escheittes, in ilk Checker zeirly.

SECT. 10. ITEM, That the Thesaurer and Advocate, persew slaughters and utheris crimes, althoucht the parties be silent, or wald utherwayes privily agree. And that in Justice aires, or particular diettes, the haill Assisoures be called for, and the absentes amerciat, to moove them, to make the better obedience.<sup>143</sup>

57. *For the furtherance and furthselling of the Criminall Justice over all the realme.*

SECT. 2. ITEM, his Hienesse ratifies the Act maid anent the punishment of Hochares of Oxen, Horse and guddes in time of labouring; With this addition: That quhat-sum-ever persone or persones cuttis and destroyes pleuch and pleuchgeire, in time of teeling, or wilfully destroyis and cuttis growand trees and cornes, sall be called therefore, before the Justice or his deputes, at Justice aires, or particular diettes, and punished therefore to the death, as thieves. And the same

<sup>142</sup> In reference to this act, see Erskine, b. iii. tit. viii. § 64, and Juridical Styles, vol. i. p. 371.

<sup>143</sup> This statute is composed of fifteen sections, the whole of which appear to be now obsolete, with the exception of sections 7, 8, & 10.

In reference to section 7, see Erskine, b. ii. tit. v. § 50.

pain to be extended, and strike on breakers of the milnes, or stickers, gorars, and fellares of Oxen or Horse, in time of leeding of cornes or fewall.

SECT. 3. ITEM, It is statute and ordained, that Officiares of Armes, committand falsed or oppression of the Lieges, in execution of their Office, sall be called therefore, before the Justice, or his deputes, at Justice aires, or particular diettes, and punished to the death, in-case they be found culpable.

SECT. 7. ITEM, It is statue and ordained, that quhair parties ar malicionslie charged, to underlie the Law, at particular diettes, before the Justice, and his deputes, in case they be found innocent, and clenged thereof: That their expenses in time cumming, for keeping of the saids diettes, be modified be the Justice, Justice-Clerke, and their deputes, beside the ordinar paine of them that ar ather acquite or past free.

SECT. 10. OUR SOVERAINE LORD, Considering the wranges alleged sustained be diverse Noble-men, and uthers Lieges of this Realme, being accused of treason, be sollisting, boasting, and minacing of the assise, after they were inclosed: The accusers and uthers persones their favourers, having liberty to passe to the said Assise, and to produce to them sik writtes and witnesses, and uther probation, as they pleased, to verifie the crime, outwith the presence of the parties accused: Quhairby the just defence of their lives, lands and honours, was taken away. THEREFORE our said SOVERAINE LORD, with advise and consent of the Estaites of this present Parliament, hes statute, declared, and ordained, that in all times cumming, the haill accusation, reasoning, writtes, witnesses, and uther probation and instruction quhat-sum-ever of the crime sall be alledged, reasoned, and deduced, to the Assise, in presence of the party accused, in face of judgement, and na utherwayes. And that all and quhat-sum-ever Lieges of this Realme, accused of treason, or for quhat-sum-ever crime, sall have their Advocates and Procuratoures, to use all the lauchfull defences, quhom the Judge sall compell to procure for them; In-case of their refuse, that the sute of the accuser be not tane, *pro confesso*. And the party accused, prejudged in ony sorte, before he be convicted, be lauchfull tryall. And to the effect, the saids Advocates and Procuratoures, may the mair freely and willingly do their Office, in the Premisses: our said SOVERAINE LORD, with advise and consent foresaid, annullis, *cassis* and rescindis all and quhat-sum-ever Actes of Parliament, and uthers statutes maid be him, or ony of his Predecessoures of before, in contrair hereof.

SECT. 11. ITEM, It is statute and ordained, that how-soone the haill persute, defenses and answers thereto, ar fully heard be the Assise, gif ony of the saids assisoures hes ony doubt, quhairof they wald be resolved: That they propone the same openly, in presence of the parties, in face of the judgement, before they passe out of judgement themselves. And immediatly after that the said assise hes chosen their Chancellor, the Clerke of the Justiciary, sall inclose the said assise them allane, or in a house be themselves, and suffer na person to be present with them, or repaire to them in ony waies, nather Clerke nor uthers, under pretense of further information, resolving of ony doubt, or ony uther cullour or occasion quhat-sum-ever. But that the said house be halden fast, and na man present therein, but the saids Assisoures, and that they be not suffered to cum out of the said

house, for quhat-sum-ever cause, or to continue the giving of their sentence to an uther time : but that they be inclosed, as said is, unto the time they be fully agreed, and returne their answers, be the mouth of the said Chancellor, to the Judge. And our Sovereine Lord with advise foresaid, decernis, declaris and ordainis, that gif ony of the saids accusers, informers of his Hienes Advocate, or uthers persones quhat-sum-ever, pretend in ony wayes in time cumming, to informe, sollist, reason, dispute, speak or repaire to the said Assise, after their remooving foorth of judgement, and inclosing of them, in maner abone written : Or utherwaies transgresse ony poynt of this present Act : In that case, the party accused, sall be halden and pronounced cleane, and innocent of the crimes and treasons then layed to his charge. And this present Act, sall be ane sufficient warrand to all Assisours in criminal causes hereafter, to pronounce the party accused, cleane and innocent, in-case ony of the premisses beis contraveened.<sup>144</sup>

114. *Na Burgh may sell their freedome, without consent of the Parliament.*

FORSAMEIKLE As it is not lauchful for ony of the Kings Vassalles, to sell and annalie their lands, in prejudice of his Majesty, their superiour : Even sa it is found expedient, statute and ordained, be OUR SOVERAINE LORDE, and three Estaites in this present Parliament : That it sall not be lauchfull to ony of his Hienesse free-Burowes, to sell or annalie, their freedome and priviledge, in hail or in part, to ony uther Burgh, or otherwayes quhat-sum-ever, without expres licence and consent of his Hienesse, and three Estates in Parliament, under the pain of amission and tinsell of the freedom of the Burgh, Outher byand or sel-land the saids free-domes, in hail or in part as said is.<sup>145</sup>

APUD EDINBURGH,

III DIE APRILIS, A.D. M.D.XCII.

8. *Ratification of the liberty of the trew Kirk : of Generall and Synodal assemblie : Of Presbyteries ; Of discipline, All Lawes of Idolatrie ar abrogate : Of presentation to benefices.*

OUR Sovereine Lord and Estaites of this present Parliament ; Following the lovabil & gude exemple of their Predecessoures : Hes ratified & appreeved, & be the tenour of this present act, ratifies & appreis all liberties, priviledges, immunities & freedoms quhatsumever, given and granted be his Hienesse, his Regentes in his name, or ony of his Predecessours, to the trew and halie Kirk, presently established within this Realme ; & declared in the first Act of his Hienesse Parliament, the twentie day of October, the zeir of GOD, ane thousand, five hundreth, three-scoir ninetene zeires : And all & quhatsumever Actes of Parliament, & statutes maid of before, be his Hienesse, & his Regentes ; Anent the liberty & free-

<sup>144</sup> The act from which these five sections are extracted, contains many enactments which are now entirely superseded or obsolete.

The act ratified in § 2 is 1581, ch. 14. See Hume, vol. i. p. 124-5.

In reference to § 3, see Hume, vol. i. p. 158.

In reference to § 7, see note annexed to 1679, ch. 16.

Sections 10 and 11 appear substantially in force.

<sup>145</sup> In reference to this act, see Mackenzie's Observations, p. 258.

dome of the said Kirk : And specially, the first act of the Parliament, halden at *Edinburgh*, the twentie foure daie of October, the zeir of GOD, ane thousand, five hundreth, fourscore ane zeires, with the haill particular Acts there mentioned : Quhilk sall be als sufficient as gif the samin were here expressed. And all uther Actes of Parliament maid sensine, in favour of the trew Kirk : And siklike, ratifies and appreivis, the general Assemblies appointed be the said Kirk : And declares, that it sall be lauchfull to the Kirk and Ministers every zeir at the least, & oftner *pro re nata* as occasion & necessity sall require, to hald & keepe generall Assemblies : Providing that the Kings Majesty, or his Commissioners with them to be appoynted, be his Hienesse, be present at ilk generall Assemblie, before the dissolving thereof, nominate and appoynt time & place, quhen & quhair the nixt generall Assembly sall be halden : & in-case naither his Majesty, nor his said Commissioners beis present for the time in that Toun, quhair the said general assembly beis halden : Then & in that case, it sall be lesum to the said generall assemblie, be themselves, to nominate & appoynt time & place, quhair the nixt generall assembly of the Kirk sall be keiped and halden, as they have bene in use to do thir times by-past. And als ratifies and appreivis, the Synodicall and Provinciall Assemblies, to be halden be the said Kirk and Ministers, twise ilk zeir, as they have bene, and ar presently in use to do, within every Province of this Realme : And ratifies and appreivis the Presbyteries, and particular Sessiones, appoynted be the said Kirk, with the haill jurisdiction and discipline of the same Kirk, aggried upon be his Majesty in conference had be his Hienesse, with certaine of the Ministers, convened to that effect : Of the quhilkes artickles the tenour followes. MATERS to be intreated in Provincial Assemblies : Thir Assemblies ar constitute for weichtie maters, necessar to be intreated be mutual consent, and assistance of brethren, within the Province, as neede requiris. This assembly hes power to handle, ordour, and redresse, all thinges omitted or done amisse in the particular assemblies. It hes power to depose the office-bearers of that Province, for gude and just cause, deserving deprivation : And generally, thir assemblies hes the haill power of the particular Eldershippes, quhairof they are collected. MATERS to be intreated, in the Presbyteries. The power of the Presbyteries is to give diligent laboures in the boundes committed to their charge : That the Kirkes be kept in gude ordour, To inquire diligently of naughty and ungodly persons : And to travel to bring them in the way againe be admonition, or threatning of Gods judgements, or be corection. It appertaines to the Elderschippe, to take heede, that the word of God be purely preached within their boundes. The Sacramentes richtly ministred, the Discipline interteined : And Ecclesiastical guddes uncorruptly distributed. It belangis to this kinde of Assemblies, to cause the ordinances maid be the Assemblies, Provincialles, nationals & generals, to bee kepted and put in execution, to make constitutions, quhilk concernis ~~to~~ in the Kirk, for decent ordour, in the particular Kirk, quhair they governe : Providing that the alterna rules maid be the Provincial, or General Assemblies : And that they make the Provincial Assemblies foresaids, privie of the rules that they sall make : And to abolish constitutions, tending to the hurt of the same. It hes power to excommunicate the obstinate, formal Proces being led, and dew interval of times observed. ANENT particular Kirks, gif they be lauchfully ruled, be sufficient Ministry and Session. They have power and jurisdiction in their awin Congregation, in maters Ecclesiastical. And decernis and declaris the saids Assemblies, Presbyteries, and Sessiones, Jurisdiction and Discipline thereof foresaid to be in all times cumming maist

just, gude, and godly in the selfe, Notwithstanding of quhat-sum-ever Statutes, Actes, Canone, Civill, or Municipal Lawes, made in the contrare. To the quhilkis and every ane of them, thir presentes sall make expresse derogation : And because there ar divers Actes of Parliament, maid in favour of the Papistical Kirke, tending to the prejudice of the liberty of the trew Kirk of God, presently professed within this Realme, jurisdiction and discipline thereof : Quhilk stands zit in the buikes of the Actes of Parliament, nocht abrogated nor annulled : Therefore his Hienesse, and Estaites foresaids, hes abrogated, cassed, and annulled, and be the tenour hereof, abrogatis, cassis and annullis all Actes of Parliament maid be ony of his Hienesse Predecessoures, for maintenance of superstition and idolatry, with all & quhat-sum-ever Acts, Lawes and statutes, maid at ony time, before the daye and dait hereof, against the liberty of the trew Kirk, Jurisdiction and discipline thereof, as the samin is used and exercised within this Realme.

And in speciall, that part of the Act of Parliament, halden at *Striveling*, the fourth day of *November*, The zeir of God, ane thousand, four hundreth, forty three zeires, commanding obedience to be given to *Eugenius* the *Paipe* for the time : The Acte maid be King *James* the thrid, In his Parliament halden at *Edinburgh*, the twenty four day of *Februar*, The zeir of God, ane thousand, four hundreth, fourscore zeires. And all utheris Actes quhairby the *Paipis* authority is established. The Acte of King *James* the thrid, in his Parliament halden at *Edinburgh*, the twenty day of *November*, the zeir of God, ane thonsand, four hundreth, threescore nine zeires, anent the Saterdag, and uther vigiles to be halie dayes, from Even-sang to Even-sang.

ITEM, That part of the Act, maid be the *Queene Regent*, in the Parliament halden at *Edinburgh* the first day of *Februar* : The zeir of GOD, ane thousand, five hundreth fifty ane zeires, giving speciall licence for holding of *Pasche* and *Zule*, ITEM The Kingis Majesty, and Estaites, foresaidis, declaris, that the 129. Acte of the Parliament, halden at *Edinburgh*, the xxij day of *Maij*, the zeir of God, ane thousand, five hundreth, fourscore, fourzeires, sall na wayes be prejudiciall, nor derogate ony thing to the priviledge that God hes given to the spirituall office-bearers in the Kirk, concerning heads of Religion, maters of Heresie, Excommunication, collation or deprivation of Ministers, or ony sik-like essentiall censours, speciallie grounded, and havand warrand of the word of God. ITEM, Our Sovereine Lord, and Estaites of Parliament foresaids, abrogatis, cassis, and annullis, the Act of the same Parliament, halden at *Edinburgh*, the said zeir, ane thousand, five hundreth, fourscore four zeires, granting commission to Bischoppes, and utheris Judges, constitute in Ecclesiasticall causes, to receive his Hienesse presentationes to Benefices, to give collation thereupon : and to put ordour in all causes Ecclesiasticall : quhilk his Majesty and Estaites foresaidis, declaris to be expired in the selfe, and to be null in time cumming, and of nane avail, force nor effect. And therefore ordainis all presentations to Benefices, to be direct to the particular Presbyteries, in all time cumming : with full power to give colation thereupon : And to put ordour to all maters and causes Ecclesiasticall, within their boundes, according to the discipline of the Kirk : Providing the foresaids Presbyteries be bound and astricted, to receive and admit quhat-sumever qualified Minister, presented be his Majesty, or laick patrones.<sup>146</sup>

<sup>146</sup> This is the act of Parliament which originally established the Presbyterian Discipline in Scotland. It was ratified and confirmed by 1690, ch. 7.



9. *Vn-qualified persones being deprived, the benefice vaikis, and the Patron not presentand, the richt of presentation pertaines to the Presbytery, but prejudice of the tackes, set be the person deprived.*

OUR SOVERAINE LORD Considering the great abuses quhilkis ar laity croppen in the Kirk, throw the misbehaviour of sik persones, as ar provided to Ecclesiasticall functions: sik as Parsonages and Vicarages, within ony Parochin, and thereafter neglecting their charge, ather leave their cure, or els committis sik crimes, faultes, or enormities, that they ar found worthy of the sentence of deprivation, ather before their awn Presbyterie, or else before the Synodall or Generall assemblies. Quhilk sentence is the lesse regarded be them, Because albeit they be deprived of their function and Cure within the Kirk: zit they think they may bruike lawfully the profites and rentes of their saids benefices, induring their life-rentes; Notwithstanding the said sentence of deprivation: Therefore, OUR SOVERAINE LORD, with advise of the Staites of this present Parliament, declaris, that all and quhat-sumever sentences of deprivation, ather pronounced already, or that happenis to be pronounced hereafter, be ony Presbytery, Synodall, or Generall assemblies, against ony Parson or Vicar, within their Jurisdiction, provided sen his Hienesse coronation: All Parsones, provided to Parsonages and Vicarages, quha has voit in Parliament, secreit Councill, and Session, or provided thereto of auld, before the Kingis Coronation, (And Maister *George Young*, Archdean of *Saint-Andrewes* being specially excepted) is, and sall be repute in all Judgementes, ane just cause to seclude the person before provided, and then deprived from all profites commodities, rentes and dewties of the said Parsonage and Vicarage, or benefice of Cure: And that ather be way of action, exception, or reply. And that the said sentence of deprivation, sall be ane sufficient cause to make the said Benefice to vaike thereby. And the said sentence being extracted, & presented to the Patron, the said Patrone sall be bound to present ane qualified person of new to the Kirk, within the space of sex Moneths thereafter: And gif he failzie to do the same, the said Patrone sall tine the right of presentation, for that time allanerly: And the richt of presentation to be devolved in the handes of the Presbytery, within the quhilk the benefice lies: to the effect that they sall think expedient. Providing allwayes, in case the Presbytery refuses to admit ony qualified Minister, presented to them be the Patrone: It sall be lauchfull to the Patrone, to reteine the hail frutes of the said Benefice in his awin hands. And furer his Hienesse and Estaites foresaides, declairis that the deprivation already pronounced, or to be pronounced, be ony Presbyterie, Synodall, or Generall assemblies, against ony of the Parsones or Vicars foresaids, sall na-wayes hurt, or be prejudiciall to ony tackes, lawfully sett be that Person deprived, before his deprivation, to quhat-sum-ever persones.<sup>147</sup>

#### 10. *Anent Manses and glebes in Cathedrall and Abbay Kirkes.*

OUR Soveraine Lord, with advise of the Estaites of this present Parliament, statutis and ordainis: That the Acts of Parliament maid of before, anent Manses

<sup>147</sup> The sums to be retained in the hands of the patron in the event of the Presbytery refusing to admit a qualified presentee are, by 54th Geo. III. ch. 169 (a local and personal act) to be appropriated to the Ministers' Widows' Fund. See Macallan's *Erskine*, b. i. tit. v. § 13, and editorial note thereon.

and Glebes, to be given to Ministers of Gods halie Evangell, within this Realme, sall be understand and extended to all Abbayes, and Cathedrall Kirkes within this Realme, quhair na uther Manse nor Glebe, pertaining to Parson or Vicar, was of before : Swa that the Ministers presently admitted, or quhilks hereafter sall happen to be admitted to the Office or Cure of the Ministry, within the said Kirk, sall have ane sufficient Manse and dwelling place, within the precinct of the Abbay quhair he servis : Togidder with four acres of land, of the best and most commodious, lyand *contigue*, and maist ewest to the said Manse, quhilks pertainis, or in any time of before pertained, to the said Abbay, or ony member thereof : Quhidder the samine land lye within the said precinct, or without the same, gif there be sameikle, as may extend to the quantity of foure acres, to be designed, inhabit, occupied, laboured, manured ; conforme to the tenour of the Acte of Parliament, maid of before, anent Manses, and Glebes, to be given to the Ministers of Gods word, within this Realme : with speciall provision, that it sall be in the option of the Abbotes, Priores, and utheris Prelates and persones quhat-sumever, fewares of the saids Cathedrall, and Abbaie places, ather to grant ane Manse to the Minister within the precinct of their place : Or else, ane sufficient Manse, lyand als ewest and commodious to the Paroche Kirk.<sup>148</sup>

11. *Ane woman divorced for her adulterie, may not annalie or dispoone her lands or possessiones, in prejudice of the bairns, gotten the time of her marriage, or of her uther aires quhat-sumever.*

IT Is statute and ordained be our Soveraine Lord, and Estaites of this present Parliament, that quhen-soever ony woman is, or hes bene divorced fra her lauchfull spouse, for her awn fault and offence of adultery : And compleitis unlawfull, and pretended marriage with the same person, with quhom she committed the said offence, or plainly and openly dwellis and resortes in company with him at bed and buird : gif she have ony lands, heretage, tackes, rowmes or possessiones : It sall not be lauchfull for her to dispoone, annallie, or put away the samin in all, or in part, ather to her said pretended husband and adulterer : or to the succession proceeding of that pretended mariage, or carnal deale : nor to quhat-sumever uther person or persones, in prejudice and hurt of the aires and succession, procreat upon the said first lauchfull mariage : or failzieng of them, of her uther lauchfull aires quhat-sumever, nor to do ony deed, directly nor indirectly, that may hurt and prejudice them therein : and declaris and ordainis, that the aires and successours of her procreat in the said first lauchfull mariage ; and failzieng of them, her uther lauchfull aires quhat-sumever, ar and sall be able to succede to her after her decease, in the saids landes, heretage, tackes, and possessiones : Notwithstanding any alienation or disposition maid in ony time by-gane, or to be maid hereafter in the contrair, quhilks pretended alienations and dispositions, maid or to be maid, in manner foresaid ? Our Soveraine Lord, and Estaites of Parliament, decernis, and declaris to have bene, and to be null from the beginning, and ordainis the said nullity to be received and admitted, by way of exception or reply : But ony processe or summounds of reduction, alsweill before the Lordes of Councell and Session, as before the inferiour Judges, in service of brieves, and all uther actions and causes, quhair-ever the samin may occur : And ordainis this present constitution, to have

<sup>148</sup> In reference to this act, see Erskine, b. ii. tit. x. § 55, *et seq.* ; and Dunlop on Parochial Law, p. 103, *et seq.*

full effect, anent all dispositiones and alienations foresaids: gif ony be maid, sen the Parliament halden be our Sovereine Lord, after his perfite age of xxj yeires compleit, in the Moneth of *Julij*, the zeire of God, 1587. zeires.<sup>149</sup>

12. *All committers of slauchter, within Kirks or Kirk-zairdes, and receipters of them after declaratour, tines their life-rentes.*

IT Is statute, ordained and declared, that quhat-sumever person or persones committes slauchter within ony Kirk or Kirk-zaird, the time of the prayer, preaching, or ministration of the Sacramentes: That person or persones, committers of the said slauchter, being ather denounced rebelles or declared fugitive for the same: The Kingis Majesty sall have full power, not only to dispoone upon them, their simple escheit of movables: bnt alsua upon the liferent of all and quhat-sumever their landes, livinges, tackes, teindes, rowmes or possessions &c. And declaris, that quhat-sumever person or persones, sall happen to receipt ony of the saids persons, quha beis denounced rebelles or fugitive, for the saids slauchters, committed within the saids Kirks or Kirk-zairds, declaratour being first past upon their said receipt. The receipters of them sall incur the same paine and tinsall of their lyfe-rentes.<sup>150</sup>

17. *The mercattes quhilks ar forbidden on the Sabbath-day, may be halden upon the oullk day.*

OUR SOVERAINE LORDE, and Estaites of this present parliament, decernis and declaris, that it sall be leasum to all Townes and Parochiners to Landward, quhair mercattes of before were kepted and halden upon the Sabbath day (being now prohibite be the Law of God, & Lawes of this Realme, swa to continue) to elect and choose ony uther day in the oulk, for halding of the saids mercates, within the saids townes, and at Landwart kirkes quhair they were accustomed to have mercates of befor (not being the Mercatte day of the nixt Burgh) And there to buy and sell vivers, and sik uther commodities, as were used upon the Sabbath-day, without stop or impediment: Alwaise without prejudice of the right and liberty of his Hienesse free Burrowes: And that letters be directed thereupon, gif neede beis, in forme as effeiris.

28. *Anent the dewty of Schireffes and Judges ordinar, their deutes and Clerks.*

FOR Remeid of the great contempt, disordour and wrang, quihik hes bene in diverse parts of this Realme, in default of keeping and execution of the gude lawes and actes of Parliament maid of before, be the Schireffe, and utheris Judges ordinar, their deutes & Clerks: It is statute & ordained, be our Sovereine Lord, with advise of his Estaites in Parliament: that the saids Schireffes, and uthers Judges ordinar, alsweill to burgh, as to land, within regality as royalty, do their exact diligence, to know and understand the Lawes of this Realme, and actes of Parlia-

<sup>149</sup> By this act a woman divorced for adultery who marries her paramour, or openly cohabits with him is disabled from doing any deed respecting her heritable property to the prejudice of her lawful heirs. Hume, vol. i. p. 455, refers to this as one of the civil disabilities attending a conviction of notour adultery. See also Erskine, b. ii. tit. iii. § 16; and Mackenzie's Observations, p. 261. There is a special preamble to this act in Mr Thomson's edition of the Scots Acts.

<sup>150</sup> It may perhaps be considered doubtful whether this act remains in force. See Mackenzie's Observations, p. 262. Sir George evidently considered the act in force in his time.

ment, quhair of the execution is committed to their charge : And that they put the samin in execution without delay, after the end of this present Parliament, specially in the searching, seeking, following, persewing, apprehending, committing to waird, and presenting to Justice of declared traitoures and rebelles, contemmandly remaining at the horne, and standing registrate in their awin buikes unrelaxed ; or in doing of Justice, upon them, gif they have commission to that effect : And gif they cannot apprehend the saids traitours and rebbelles, within the bounds of their awin jurisdiction, to make denunciation to the Schireffes and Judges ordinar, of the four halves about, that sik persones ar fled within their bounds, requiring them to use the like diligence, in searching and apprehension of them : as they will answeire to his Majesty, at their perrell, and under the same paine, that the traitoures or rebelles hes incurred. In inquiring, searching and apprehending of sornares, oppressoures, strang vagaboundes, and beggares, wandring athort the Realme, on pretence that they ar schip-broken or banished for slaughter, or uther odious offences : Or ar of the dissimulat thieves and abusers, calling themselves *Egyptians*. In execution of Justice, in all civil causes belonging to their judgement, without partiality or needles delays. In extracting of processes, decreets, and giving of seasinges and retoures, at reasonable prices, without exorbitant extortion. In bringing of their court buikes, with the compt of escheittes, and unlawes, intrometted with be them zeirly, to the checker In making of their Deputes & Clerks, of men of best fame, knowlege, understanding & experience, that may and can use the office, quha sall be astricted to bring their registers, of seasinges, horninges and registrationes, to the checker, and his Hienesse Thesaurer, as is contained and ordained in the actes of parliament, maid there-anent of before. And that the saids Schireffes and uther ordinar Judges, may the better execute and do their dewty in the premisses : Our Sovereine Lord, with advise of his Estaites in this present parliament, ratifies and apprievis all liberties, priviledges, registrationes, fees and commodities, granted to them, their Deputes and Clerkes, be his Hienesse, or his Progenitoures of before, they alwaies findand gude soverty, in his Hienes nixt checker, for dischargeing of their office dewtifully, and making of their compts zeirly in the checker, at the diettes appoynted thereto : and that they sall nawaies suffer themselves to be denounced to the horne, in default thereof : But that they sall send their deputes, ane or maa, and Clerk zeirly at the first day of *November*, to be examinat and admitted, be the Lords of Councell & Session under pecunial paines, at the Lordes modification, to be paid be them, to our Sovereine Lordis use, in case of failzie, with certification to them, that gif the said soverty be not found betuixt and the end of the nixt checker, they sall be denounced rebelles, & put to the horne, & thence furth, all his Hienes subjects, within their jurisdictions sall be exeemed fra their offices, and jurisdiction : And attour declaris & ordainis all precepts furth of the Chancellary upon retours to be past in the auld maner to the Schireffe, & utheris Judges ordinar, with the clause, *capiendo securitatem*, un-urgeand the party with present payment, in-case the said soverty be found, as said is.<sup>151</sup>

<sup>151</sup> In reference to this act, of which a great part appears to be now obsolete, see Mackenzie's *Observations*, p. 264-5. The previous acts relating to Sheriffs are 1432, ch. 1 & 2; 1487, ch. 5, 6 & 8; and 1491, ch. 9.

29. *The office of the Lyon King of Armes : of execution of letters of treason : of the admission and number of the officiares of armes.*

OUR Sovereine Lord, and Estaites of this present Parliament, considering the great abuse that hes bene amangst the lieges of this Realm, in their bearing of armes, usurpand to themselves sik armes as belangis not unto them, swa that it cannot be distinguished be their armes, quha ar Gentlemen of bluid, be their antecessors, nor zit may be decerned, quhat Gentilmen ar descended of Noble stock and linage. FOR remeid quhairof, his Hienesse, with advise of the saids Estaites, hes given and granted: And be this present Acte, gives and grantis, full power and Commission, to *Lyon* King of Armes, and his Brother Herald, to visite the hail Armes of Noble-men, Barronnes and Gentle-men, borne and used within this Realme: and to distinguish and discern them, with congruent differences, and thereafter to matriculate them in their buikes and registers: and to put inhibition, to all the commoun sort of people, nochtworthy be the Lawe of Armes, to bear ony signes armorialles: That nane of them presume, or take upon hand, to beare or use ony Armes, in time cumming, upon ony their insicht or houshold geare, under the paine of escheitting of the guddes and geare, swa oft as they sall be found contraveining this present Act, quhair-ever the samine Armes sall be found graven and painted, to OUR SOVERAINE LORDIS use: and like-wayes under the paine of ane hundreth pundes, to the use of the said *Lyon*, and his Brother Herald: And failzeing of payment thereof, that they be incarcerat, in the nearest prison, therein to remaine upon their awin charges, during the pleasure of the said *Lyon*.

Execution  
of letters of  
treason

ITEM, Because charges of treason, hes not bene execute & used, with sik solemnity and Officiares of Armes, as the weichtines thereof requires: It is statute & ordained, that Our Sovereine Lordis Thesaurer, & utheris directers of sik letters, deliver them in time cumming, to be execut be the ordinar Herald & Purservantes, beand coattes of armes, or Masers, to be used be thame, as of before; & gif ony execution, under the paine of treason sall be execute utherwaies, declaris the execution to be null, and of nane availle.

ITEM, In consideration of the great abuse of Messengers & of Officiares of Armes within this Realme, quhilkis for the maist part ar not qualified, for using of the said office, being admitted be extraordinar and importune suites, be quhais abuse, the Lieges of this Realme ar heavily troubled and oppressed: Therefore it is statute and ordained, that the said King of Armes, be advise of the Lordis of Councill & Session, deprive & discharge, all sik Officiares & Messengres of Armes, as he sall finde unworthy of the office. And take sicker soverty of the remanent, for observation of their Injunctiones in time cumming: With power to the said King of Armes, with advise of the saids Lords, to enjoyne further necessar injunctiones to the saids Messengers, for keeping of gude ordour in their offices: discharging him in the mean-time, to admit ony maa officiares hereafter, quhil the hail messengers, presently bearing armes, be reduced be death or deprivation, to the number contained in the Acte of Parliament, maid anent the confused number of officiares of armes.

ITEM, Because the jurisdiction of the *Lyon* King of Armes, is not able to execute dew punishment upon all persones, that sall happen to offend in the office of Armes: Therefore our Sovereine Lord, with advise of his three Estaites in Parliament, ordainis and commandis, all civil Magistrats, as they sall be required be the King of Armes, or ony uthers in his name to concur with him, to see the acts

maid in his favours, of his office put to dew execution in their jurisdictions: As alswa to concur with him, to the punishment and incarceration of all sik persons, as sall usurp the bearing of his Majesties Armes, after dew deprivation, under the pain of rebellion, and putting of the disobeyers to his Hienesse horne, with certification to them and they failzie being required, letters sall be direct *Simpliciter* to put them to the horne.<sup>152</sup>

30. *The names of all rebels suld be delivered to the Thesaurer, with all unlaues, Names of all fugitives.*

BECAUSE, It is provided that criminall letters sall not neid to be registrat, bot to returne to the adjournal: Therefore ordainis and commandis the Justice-Clerk and his deputes within sex dayes, after criminall Letters, with execution of ony persones at the Horne, beis returned to them, to deliver the names denounced, with ane breife note of the cause, to the Thesaurer, or his Clerke, or Register, that letters for the uptaking of escheittes, of the persones denounced, may be directed and execute, with all expedition, as the said Thesaurer and Justice-Clerke, will answeere to his Hienesse, upon their dewty and diligence, That in Justice courts, or Justice aires, the haill assise summond, being called out, and the absentes unlawed: The extract of the unlawed, be delivered to the Thesaurer, or his Clerke, within sex dayes thereafter, that the letters be directed thereupon, for uptaking of the said unlaues, without composition to be maid therefore.

And likewise quhen-ever ony persones, that hes found soverty to underly the law, compeiris not at the day apoynted, and there-throw are decerned to be denounced rebels, as fugitives fra the Law: The Justice Clerk or his deputes, sall deliver the act of adjournall thereupon, with the precept to denounce the persones sa decerned fugitive, be open Proclamation, at the mercat-croce of *Edinburgh*, within sex dayes, after they be decerned: quhilk denunciation, our said Sovereine Lord, with his Estaites declaris and admittis, to be as lauchfull for intronetting with the escheittes, as gif the samin were maid at the mercat croce of the head Burrowes of the Schires, quhair the saids rebelles dwelles: Bot the said horning sall not serve to put the inhabitantes of the saids Schires, in *mala fide*, toward the receipt, supplie, and inter-communing with the saids Rebelles denounced, quhill the said denunciation of horning be used at the mercat croce, of the head Burrowes of the Schire, quhair the persones rebelles themselves dwellis: And that the Lordes of Councill and Session, grant na Letters of suspension, upon ony paines and unlaues of liquidat summes, charged for be the Thesaurer, without consignation or gude sovertie, in the in-partes of the Realme.

That *Lyon* King of Armes, within fiftene dayes, after the publication of the Actes of this present Parliament, deliver to the Thesaurer, or his Clerk, the names of the Officiars standing admitted, with the names of their cautioners: as also the names and cautioners of the deprived officiers in time cumming. That all exemptiones and licences fra raides and assises, or for transporting of forbidden guddes Licences. (gif ony sall happen to be granted) sall be subscribed be the Thesaurer for composition to his Hienes use. And to be registrat in the Thesaurers register, to the effect he may be charged therewith in time-cumming in his comptes, and that na sik licenses be warrand in judgement, or to the signet or privy seale, wantand the subscription of the said Thesaurer. And for-sameikle as the care and charge of

<sup>152</sup> This is one of several statutes which regulate the power of the Lord Lyon. See 1587, ch. 30, and note thereon. See also Erskine, b. i. tit. iv. § 33.

Monkes  
portiones.

Commis-  
siones.

the receiving & making compt of the Monkes portiones, first fruites, and fift-penny of benefices, is committed to the charge and diligence of his Hienes Thesaurer. Therefore ordainis and commandis the said Thesaurer, to make ane perfite rentall of the saids Monkes portiones, first fruites, and fift-penny, and to charge and discharge him therewith in his comptes. And that he may be the better acquainted therewith; Ordains all signatours of giftes and provisiones to be past upon any part of the same, to passe his Hienes Thesaurers register, and be subscribed be the keeper thereof, before it be sufficient warrand to the seales. OUR SOVERAINE LORDE, with advise of his three Estaites in Parliament, dischargis all Commis-siones of Justiciary granted be his Hienes of before, and nane to be granted in time cumming generally, or for langer space, nor the earrand in hand, may be conveniently perfited, and that upon caution to produce the proces, and pay that part of the commodity, quhill be the commission is destinate for the Kingis use.  $\frac{1}{3}\frac{2}{3}$

<sup>153</sup> In reference to this act, see Erakine, b. ii. tit. v. § 56 & 57; and b. iv. tit. iii. § 12.

<sup>154</sup> The following act appears in Mr Thomson's edition of the Scots acts, but not in the edition of 1681.

"XXXI. For furthering of the Kingis comoditie be the mynes and metallis.

"OUR SOUERANE LORD understanding, &c. &c. &c. Thairfore our said Sourane Lord with auise of his estaittis in parliament hes dissoluit the saidis mynis and mettallis "in safer as they war part of his propertie anext or ony wyis to the effect the same may be "sett in feu for augmentatioun of Oure said Sourane Lordis rentall and statutis and or- "danis that it salbe lesum to his hienes and his successouris with auise of the thesaurare "and of the said master of the mettallis coniunctlie and for reasonable compositioun to "sett in feu ferme to every Erle Lord Barroun and vther frehalder within this realme all "and quhatsumeuir mynis of gould, siluer, copper leid tin and vther quhatsumeuir met- "tallis or mineralis qlk is or may be found within thair awin landis and heretageis with "pouer to thame to seik and discover lauboure and work the saidis mettallis and miner- "allis, and to sell dispoone or sett the mynis thair of in takkis or few with consent alwyis "of the said thesaurare and Maister of the mettallis conjunctlie in maner foirsaid to vtheris "thair subtenentis at their pleasure as thair proper gadis and heretage and with sic vther "ample priuilegeis as oure said Souerane Lord with the consent foirsaid sall think expe- "dient for the wining and working of the said mettallis be cuntriemen or strangearis pay- "and thairfore zeirlie the saidis Erlis Lordis Barounis and vtheris quha sall accept the "saidis fewis as said is to our said Souerane Lord and his thesaurare thair factouris and "servitors in thair name the just tent part of all and hail the said gould siluer copper "leid tin and vtheris minerals which salbe found and gotten zeirlie within thair saidis "landis and heretageis upoun the ground where the same salbe found in sic vre and qua- "litie as the same salbe gottin out of the erth frelie but ony deductioun with expresse pro- "visioun the quhatsoever vre the saidis personis sall win to their awin use salbe resaut "with the Kingis dutie be the maister refyner whom his Majestie sall appoint to refyne "bayth his Majesties tent part and all the rest of the vre which salbe win within this "realme that his Majestie be not defraudit of his g dertie thair of provyding that in "cace ony mynis being sufficientlie discoverit to be within any of the landis pertening to "ony subject of this realme and the Lord of the ground sufficientlie advertesit thair of and "lawfullie requirit to work the same himself befoir ane Notar and four Witnesses as effeirs "gif he refusses or delayis the space of thre monthis thairefter then and in that cace it "salbe lesum to our said Souerane Lord to set the same in feu or tak or otherwyis to cause "work the same or to make richt thair of to ony other persone at his Graces pleasure that "by the wilfull refus or delay of the awnar of the ground his grace and his countrie be not "defraudit of the comoditie of the said myne. And Our said Souerane Lord with advise "foirsaid of the parliament declaris that this act of dissolutioun salbe perpetuall to last for "all time coming," &c.

50. *Anent the jurisdiction, presentation, qualities and age of the Lordes of Session.*

BECAUSE the Nobility, Earles, Lords, and Barronnes, auncient heritours of landes, livinges, and possessiones, understoode the institution of the Colledge of Justice, and Lords of Session, to have bene fra the begining, for decision of all civill actiones; unto the quhilk decision their haill heritages, livinges, landes, and possessiones are subject: And that his Hienes Progenitours institut the said Colledge of cunning and wise-men: Quhilk his Majesty willing to continew, according to his for-bearis gude intention: And to forsee the corruption increasand in the said Colledge, in this latter and declining age, declaris his Hienes minde be Acte of Parliament: That in all times hereafter quhen ony place suld vaik in the Session; That his Majesty suld present and nominate thereto, a man fearing God, of gude literature, practik, judgement, and understanding of the Lawes, of gude fame, having sufficient living of his awin: And quha culd make gude expedition, and dispatch in matters tuitching the Lieges of the Realme. And zit that is required, that his Hienes gude intention be mair specially expressed toward the complaint of cheising of zoung men, without gravity, knowledge, and experience, upon the said Session, not having sufficient living of their awin.

THEREFORE OUR said SOVERAINE LORD, with advice of the Estaites of this present Parliament, declairs that nane sall be received to ane place of ane Senator in the Colledge of Justice, except he be sufficiently tryed & knowin be his Hienes & haill Lords of the Session: That the said person, to be presented and received, have in zeirly rent, properly pertaining to himselfe, the summe of ane thousand markes usuall money of this Realme, or els twenty chalders of victuall: and that his experience, quality, and conversation, may be the better tryed, that he be of the age of twenty five zeires at the least compleit, in all time cumming, utherwise his presentation and admission to be null, annulland all presentationes given and granted be his Majesty, sen his Hienes Coronation, to quhat-sumever person or persones, not beand of the age foresaid: ratifiand neverthesse and ap-prievand alwaies all Actes maid be his Majesties predecessours, and his Hienes self of before, upon the institution of the said Colledge, and reformation of the abuses thereof.<sup>155</sup>

54. *New boundand infestments prejudgis nocht ony person anent their meithes and marches.*

IT IS Statute, ordained, and decerned be his Hienes and Estaites of this Parliament, that the bounded infestmentes quhat-sumever, ather granted or to be granted, be our said Sovereaine Lord, or ony of his Successors, or be ony uther superior to his awne heretable tennent, be the said heretable tennentes resignation; Albeit the same containe ane new gift with supplement of all faultes, (quhilk only respectis the superior, grantand the said infestment, and na wayes suld be extended to the prejudice of the thrid person) that the said infestment past upon the resig-

This statute contains many enactments which were merely temporary, or which are at all events now obsolete.

In reference to that part of the act which is here printed, see note affixed to act 13 of the Parliament held at Perth on 26th May 1424.

<sup>155</sup> See note affixed to 1579, ch. 38.



nation of the tennent, sall work na prejudice anent the bounds or marches, ather in property or commounty to ony uther person, bot the questions arising upon the richt & possession of the said property and commounty, sall be determined and judged be the Lordes of Councell & utheris inferiour Judges, & Ministers of the Lawes in the same sort and maner, as gif there were na mention of the boundes and marches contained in the infeftment past upon the said resignation.<sup>156</sup>

*56. Against unlawfull conditiones in contractes or Obligationes.*

AS IT IS not lesum to use and commit usury : swa it is not lesum to ony privie man, be his awen invention and authority, to astrict or burden ony of our Soveraines Lords lieges, with unlauchfull and impossible conditiones against all Law, equity, reason and gude forme, albeit their necessity for the time, constraine them to zeild thereto ; as quhair sum persones gives foorth their money upon profite, upon contractes or obligationes, they provide that the parties receivers thereof quhair-soever they dwell, in farrest partes of the Realme, sall be charged to make payment, only be oppen Proclamation, at the mercat Croce of *Edinburgh*, upon swa short and suddaine warning, as probably and possibly it cannot cum to the knowledge of the persones swa charged. And that the denunciation of the Horning sall be at the samine mercat-croce, and the horning registrat in the Schireffe buikes of *Edinburgh*, makand the samin als lauchful, as gif the persones were charged personally, or at his dwelling place : And the execution of horning, used at the mercat Croce of the head Burgh of the Schire, quhair the parties dwellis : And the horninges registrat in the Schireffe buikes thereof, to the great hurt and prejudice, not only of the parties swa denounced : Bot of our Soveraine Lord, and his Lieges, to quhais knowledge probably the saids denunciations of horninges cannot cum.

THEREFORE his Hienes with advise of his Estaites in Parliament, statutes, ordainis and declaris, that na sik unlauchfull and unpossible conditiones, be maid in contractes or obligationes, amanges ony of his Hienes subjectes in time cumming. And in-case ony denunciations of Horninges sall happen to be maid at the said mercat Croce of *Edinburgh*, only upon charges used thereat, proceeding upon the unlauchful and impossible conditiones abone specified : the same charges and denunciations of horning, sall not be repute lauchfull. Bot the parties users thereof sall be charged, to cause charge and denunce of new, according to the forme, used and observed be the common Law, and consuetude of the Realme.

<sup>156</sup> The following preamble to this act appears in Mr Thomson's edition.

" Becaus it is cleirlie vnderstand that the baronis of this realme and vtheris heretable  
" possessoris haldand thair landis of oure Souerane Lord or vtheris superioris are heichlie  
" preiudgeit in thair heritages and commounties appertaining thairto be new infeftmentis  
" gevin to the personis mercheand with thame upoun their awin resigna'nis, In the quhilkis  
" new infeftmentis be thair bounds and m'chis specifeit thairin thay may include the pro-  
" pirtie of the landis nixt adiacent, qlk they neuir hard of before in grett preu'dice of the  
" landis adjacent to thame, as als thay may include the lands pertening in comontie to  
" vtheris baronies or landis nixt adjacent, and be thair awin resigna'un w<sup>t</sup> the boundit in-  
" feftment following may move questioun vpoun the propertie of all landis contenit in thair  
" boundit infeftment, qhik may breid ane greit stryff to all our Souerane Lords leigis for  
" remeid quhairrof."

59. *That the copies of letters or charges be subscribed be the executor thereof.*

ITEM, It is statute and ordained that in all time cumming, all copies of sum-mounds and letters, quhilkeis sall be delivered to ony party, be subscribed be the officiar executor thereof.<sup>157</sup>

60. *Na person may be denounced rebell upon letters charging all and sundry generally.*

IT IS statute and ordained in time cumming, that na charges nor letters of horning sall be generally directed, against all and sundry, except it be against ane Burgh, Colledge or Community quhilke representis ane body; At the least, it sall not be lesum to denunce ony particular party to the horne, upon sik generall letters, except gif the said party be first lawfully and specially called, to heare and see the saids letters, direct against him, for a special and certaine dewty or fact: And for this effect, that all giftes of pensione, Monkes portions, Ministers assignationes of thriddes &c. The special landes, names of the tennentes, and quantity of the dewties, assigned, assumed or disposed, be particularly contained: and that an dewty be not disposed to twa sindry parties, quhilke is *Crimen Stellionatus* of the Law: Providing it sall be lesum to ony beneficed man, to seeke generall letters, conforme to his provision, to corroborate the same, and to serve for ane publication and intimation thereof: Bot na waies to serve or be sufficient, to denunce ony man to the horne, not beand specially called, and his dewty expressed therein, as said is.<sup>158</sup>

61. *That compensation de liquido ad liquidum be admitted.*

OUR SOVERAINE LORD, And Estaites of Parliament statutis and ordainis: That ony debt *de liquido ad liquidum* instantly verified be writ, or aith of the party, before the giving of the decreete, be admitted be all Judges within this Realme, be way of exception: Bot not after the giving thereof, in the suspension, or in reduction of the same decreete.<sup>159</sup>

62. *Damage and expenses of pley, suld be modified be the Judges.*

ITEM, It is statute and ordained, that damage, interest, and the expenses of pley maid and susteined be the parties, be altogidder admitted, and liquidat be the decreet, before all Judges within this Realme: And specially quhen as the libell, claime or petition ar proven be writ, containand damage, interest and expenses, and upon registrat bandes, obligationes, and contractes, summoundes, beand for the coastes and skaithes, quhilke will stay parties to be wilfull and obstinat pleyers, And this to be extended alsweill to the defenders obtainand absolvitour, as to the parties persewares, obtainand decreete condemnatur.<sup>160</sup>

<sup>157</sup> This act is in force. See Tait's Law of Evidence, p. 10, 11.

<sup>158</sup> In connection with this act, see A. S., 22d June 1687, and Ersk. b. iv. tit. iii. § 11.

<sup>159</sup> In reference to this act, see Erskine, b. iii. tit. iv. § 12, *et seq.*, and cases under art. "Compensation" in Shaw's Dig., beginning with case 39.

<sup>160</sup> In reference to this act, see Moodie v. Rhind, 15th January 1774; Hailes, 550, Heggie, &c. v. Stark, 1 March 1826; 4 S. & D. 518; Gordon v. Hyslop, &c. same date, 4 S. & D. p. 520; and Scott v. Wilson, &c. 10th March 1829, 7 S. & D. 566.

66. *Anent the escheittes of Rebelles.*

OUR SOVERAINE LORD, with advise of his Estaites in this present Parliament, statutis and ordainis, that na assignation, or uther evident alleged maid in defraud of the creditour, sall be a valiable title to persew or defend with, gif it sall be then instantly verified be writ, that the cedent remains Rebelle & at the Horn, for the same cause un-relaxed : Nor na gift of escheitte, assignation or uther richt, proceeding thereof, alleged maid in defraud of the creditour, and in favour of the rebell, sall be valiable title to Persew or defend with, gif it sall be then instantlie verified be writ, that the rebell remainis still at the horne, for the same cause : As alswa it sall be an relevant exception, against ony pretending title thereto, be assignation or gift of escheit of the rebell, to allege that the said rebell himselfe, his wife, bairnes, or neare friends remainis in possession of his tackes and guddes, to his awn use and behoove. And in-case escheittes or life-rentes sall happen to be given ony utherwaies, nor to the behoove of the party offended : the Thesaurer sall be halden to make the disposition to ane responsall person, quha sall be debtor to the party, at quhais instance the horning is led for his debt : Or the Thesaurer (gif he thinkis gude) sall take gude sufficient caution for his reliefe : And in-case the donatour sall not be found responsal in landes or guds : Our Sovereine Lord, with advise of his Estaites, declaris the gift to be null. And because persons convict, or standing rebelles for treason, murther, slaughter, or uthers odious crimes, commonly hes the fruition of their guddes, debts, tackes, steadings and possessions, their houses still bruiked and possessed be their wives, bairns, or tender friendes, to the defraud of the Law, of the profite of the Croun, and encourageing of wicked men, after the committing of mischievous deedes : And that under pretence and collour of fraudfull dispositiones or assignationes, maid be their selves, or giftes of their escheittes, simulatly purchased or transferred in favour of themselves, their wives, bairnes, tender friends, or weill-willers, to their commodity and behoove, for remeid quhairrof, our Sovereine Lord, with advise of his Estaites, statutis and ordainis ; That the said fraudfull and simulat dispositiones of escheittes, or ony thing following thereupon, sall not serve to nurish and susteine the saids Traitoures and rebelles, in their contempt and rebellion : but that it sall be lauchfull to his Hienes and his Thesaurer, to intromett-with, and up take the said escheit-guddes, geare and debts, remaining in the possession of the person be quhais deed & occasion it fell : Or of his wife, bairns, family, or tender friendes quhat-sum-ever, upon the ground, and within the house occupied and possessed be him, before he was declared, or put to the Horne : Or in-case hee have bene receipt in the same house at ony time after his forefaltour, or denunciation to the Horne ; notwithstanding ony fraudfull disposition or assignation, or simulat gift or richt of escheitt purchased of the same, in favour, or to the behoove of the saids Traitoures or Rebelles of before, quhair-throw the houses and possessiones of the saids Traitoures and Rebelles, sall nawaies be suffered to cum to their use or commodity, directly, or indirectly, during the time of their Rebellion ; And the up-taking of the saids escheitt-guddes and debtes, and labouring of the saids tackes and possessiones, during the continuance of the saids Traytoures and Rebelles, in their rebellion, sall nawaies be impute to the said Thesaurer, or utheris havand his richt or direction, as ony action criminal or civil, exonerand and dischargeing them of the same for ever : And that the said Thesaurer or his deputes, cause the houses of the persones committers

of the crimes foresaids, be deteined and keeped, upon the expenses of the reddiest of saids escheitt-guddes.<sup>161</sup>

68. *Willfull setting of fire in Coale-heuches, is treason.*

FOR The better punishment of the wicked crime of setting of fire in Coale-heuches, be sum ungodly persones, upon privat revenge and despite: It is statute and ordained, that the committing of the said crime, in ony time hereafter, sall be treason: And that the committers thereof, being ordourly convict, sall suffer sik punishment in bodies, landes and guddes, as is dew be the Law, in causes of treason.<sup>162</sup>

69. *For punishment of maisterfull beggares, and reliefe of the puir.*

OUR SOVERAINE LORD, And his Estaites, in this present Parliament, ratifies and apprievis his Hienes Act of Parliament maid for punishment of strang and idle beggars, and provision for reliefe of the puir and impotent: And ordainis the same to be put in execution in all partes of the Realme, as it is already tane effect, within the partes of the Burgh of *Edinburgh*; And because sum of the Schireffdomes, ar of wide and lang boundes, quhair-throw it will be diffiail, to convoy vagaboundes and persones offending, to the commoun prisoners of the head Burrowes of the Schire: Therefore ordaines and commandis all Schireffes, Stewartes, Baillies, Lordes and Baillies of Regalities, and their deputes: And Provestes and Baillies within Burrowes, to make prisoners, stockes and irones; Not only at the head Burgh, but also at the principal throw-faire townes, and Paroche Kirkes, within the haille boundes of the Schire: alsweill to Burgh, as to Landwart; And to constitute ane or twa Schireffe-deputes, of honest and zealous men of best credite and power in the boundes within, or nixt adjacent to the saidis Burrowes, throw-faire Townes & Paroche Kirkes, to put the effect of the said act of Parliament in execution: Or gif the saidis Schireffes, or utheris Judges ordinar, beis found remisse or negligent: gives and grantis, full power, charge and authoritie, to the Ministers, Elders and Deacons within the boundes of everie Parochin, or of sa monie parochines as will concur togidder, to nominate and elect ane, twa, three, or maa persones of the best habilitie, zeale and discretion, within the same Parochin or boundes, quhom his Hienesse makis and constitutis Justices and Commissioners in that parte, to the effect underwritten; Givand, grantand, and committand to them, conjunctly and severally, full power, charge and authoritie, to execute the said act of Parliament, concerning the punishment of strang and idle beggares and vagabounds and provision for reliefe of the puir and impotent: And to that effect, to fense and hald courtes, create Officiares summond assise, ilk person under the paine of five poundes, un-lawes and paines, to take, uplift and raise; And for the same, gif neede beis, to peynd and distrenzie, and to the uses contained in the said acte applie; And generallie all and sindrie uther thinges, to do, exerce and use, that to the full execution of the same acte of Parliament, within the saidis boundes, is necessarlie required. And in-case the saidis Judges ordinar, or their deputes, or

<sup>161</sup> This act appears in force so far as it is applicable to denunciation for criminal causes. See *Ersk. b. ii. tit. v. § 80*.

<sup>162</sup> In reference to this act, see *Hume*, vol. i. p. 126. The crime mentioned is here declared to be treason; but this was altered by 7th Anne, ch. 21, § 7, which made the said crime simply a capital offence.

the saidis persones to be nominate and elect, as said is, constitute Justices and Commissioners, be the authoritie of this present acte of Parliament, sall happen to refuse or delay, to accept and use the Commission; Or having accepted the same, sall be found remisse or negligent in execution thereof: they sall incurre the paine and un-law appointed, against Judges and Magistrates, be the said act of Parliament: quhair-upon dittay sall be uptaken, and they called and accused therefore, at general Justice aires, or particular diettes; Or then letters sall be direct, be deliverance of the Lordes of Councell and Session; Charging alsweill the saidis Judges ordinar and their deputes, as the saidis persones to be nominate and elected; and constitute Justices and Commissioners, be this present act of Parliament; upon the sight of the acte and testimonial of their nomination and election: to put the said act of Parliament to execution in all poynts: after the forme and tenour thereof, within fourtie daies, nixt after the charge; under the paine of rebellion, and putting of them to the Horne; And gif they failzie therein, the saids fourtie daies being bypast; to denunce the disobeyars, rebelles, and put them to the horne: And to escheit and inbring, all their movable guddes to his Hienesse use, for their contemptioun. And for the better tryall of commoun sornares, vagaboundes, and maisterfull beggares: feinzied foolles and counterfaict *Egyptianes*: And to the effect that they may be still persewed, quhill they be compelled to settle them at sum certaine dwelling, or be expelled fourth of the Countrie: That the Schireffes and uther Judges ordinar, and their deputes, & uther Justices & Commissioners abone specified, take inquisition be inquest, at the head Courtes zeirlie, of the names & takens of them; And make denunciation of them, to the nixt ordinar Judges and Parochinnes, in the four halves about: As also to our Sovereaine Lord, and his secret Councell, within 40 dayes after the saids head courts under the paine foresaid.<sup>163</sup>

70. *Quha are fore-stallers and Regraters: how they sall be accused, and pain thereof.*

FORSAMEIKLE As sindry Acts of Parliament, hes bene maid for punishment of for-stallers and regraters, being very pernicious members in the commoun well: zit because it hes not bene expressed quhat was forestalling & regrating: Therefore our Sovereigne Lord, with advise of his Estaites, in this present Parliament: declaris, statutis and ordainis, that quha ever buy; or cause buy any Merchandise, victuall, or uther thing cumming be Land or water, toward any faire or mercat, in Burgh or in Landwart, to be sauld in the same, from any partes bezond Sea, or within the Realme: Or makis onie contract, or promise, for the having and buying of the same, or onie part thereof, before the saids Merchandise, victuals, or uther thinges sall be in the faire or Mercat-place, in Burgh, port or raide, reddie to be sauld: or sall make any motion be word, writ, or message, for raising of the prices, or dearer selling of any of the thinges abone mentioned: Or else diswade or move any person cumming to the faire, Mercat or Town, to bring any of the thinges abone mentioned, to the Mercat, fair or Town, sall be esteemed and judged ane forestaller: And quha-ever gettis in his possession, in any Fair or Mercat, any corne, victuall, flesh, fish, or uther vivers, that sall be brocht to be sauld, and sellis the same again, in any Faire or Mercat, halden in the same place, or any

<sup>163</sup> In reference to this act, see 1579, ch. 12, and the note affixed thereto. See also Dunlop on Parochial Law, p. 322, *et seq.*

uther Faire or Mercat, within four miles thereof: Or quha gettis in his hand by buying, contract or promises the growand corne on the field, sall be repute a regratour. And because there is so little effect followed in the execution of the said Act, be the Magistrats within Burrowes, to quhom the execution thereof was committed: Therefore it sall be lauchfull in time cumming, to OUR SOVERAINE LORDIS Thesaurer or Advocate, to call and persew all persones suspect and delated of forestalling and regrating, in-case they sall happen to prevene, be apprehending, intending and executng first, alsweill as the saids Magistrates in Burrowes; And it sall not be leasum to the Magistrates within Burgh, to replage ony persons challenged or persewed be the Thesaurer or Advocate, before his Hienes Justice or his deputes, at Justice aires, or particular diettes. And albeit there be na speciall dittay, bot that the forestaller and regratour, be only accused of commoun forestalling or regrating, swa repute and halden: zit the libell in that generalitie, sall stand relevant, and the persones accused, to be put to the knowledge of an assise? And gif they cum in will, or be convict be ane assise, for commoun forestalling and regrating of Mercattes: They sall incurre for the first fault, the paine and un-law of fourty pundes: And sall finde soverty to absteyne in time cumming, under the paine of ane hundredth markes: And gif he fall againe in the secund fault, the principall, and his soverty, to incur and pay the said summe of ane hundredth markes: And for the thrid fault, the offender being convict, or cum in will, to tine and forefault all his moveable guddes, to be in-brocht to OUR SOVERAINE LORDIS use, as escheit: And that Justice courts or aires, for the effect foresaid, be halden every zeir twice.<sup>164</sup>

72. *Deforcers or troublers of officers, in execution of letters, forfaultis and tynis all their movables.*

OUR SOVERAINE LORDE, And his Estaites, conveyned in this present Parliament; For remeid of the daily hurts and injuries, received be officiares of armes, or Schireffes in that part, executand letters or precepts in our Sovereine Lordis name and authority; Statutis and ordainis, that in-case ane officiar of armes, or Schireffe in that part, or uther person quhat-sumever, the time of the execution of ony summondes, letters or precepts, direct be his Hienes, or uther Judges within this Realme; Or in putting of decreetes to dew execution, be deforced in doing of the same, or be molested, invaded or persewed, to the effusion of their bloud, be the person or persones quhom they sall be vertew thereof summound or charge; or ony uthers of their causing and command, the deforcers & persewers of the officiares, & uthers foresaidis, sall forefault, amitt & tine all & quhat-sumever their gudes & geare moveable: & the ane halfe thereof, sall appertaine to our Sovereine Lord, as escheitte: and the uther half to the party, at quhais instance the saids summoundes, letters and precepts ar direct and purchased: quhilk execution, Our said Sovereine Lord, and Estaites foresaidis, decernis and declaris to be lauchfull and ordourlie execute; Notwithstanding the said deforcement, and invasion of the saidis Officiares, and uthers abone written, to be committed in manner foresaid: The deforcement being first verified and proven.<sup>165</sup>

73. *Concerning the relevancie of libelles in cases criminall.*

ITEM, It is statute and ordained, seing that diverse exceptiones and objectiones

<sup>164</sup> In reference to this act, see Hume, vol. i. p. 510, *et seq.*, and Ersk. b. iv. tit. iv. § 38.

<sup>165</sup> In reference to this act, see Hume, vol. i. p. 394, *et seq.*

risis upon criminall libelles, and parties are frustrat of Justice, be alleged irrelevancie thereof: That in time cumming, all criminall libeles, sall contene that persones compleined on, ar airt and pairt of the crimes libelled; Quhilk sall be relevant to accuse them thereof; Swa that na exception or objection take awaie that part of the libell, in time cumming.<sup>166</sup>

75. *Anent the taxation of Burrowes: Watching, and warding.*

ITEM, Seeing the taxation and stentes upon the Realme is multiplied, quhere-with the Burrowes are verie greatlie burdened: Therefore it is statute and ordained, that all manner of persones, inhabitantes of Burrowes exerceand onie manner of trafficque, Merchandise, or having change within the same, sall beare their part of all taxes, stentes, and taxations, watching, and warding, in all duties and services pertaining to our Soveraine Lord, the weill of the Realme, and the utilitie of the Burgh; and that without onie respect to be had to onie Priviledge, discharge or exceptiones, granted be our Soveraine Lordis Predecessoures; or be his Hienes self, or to be granted in times cumming be his Majestie, or his Successours, to quhatsumever person, or persones, of quhat-sum-ever qualitie, or for quhat-sum-ever cause, And ordainis this to have execution against all persones exerceand the trafficque of Merchandise, or uther change, in onie of the Burrowes of this Realme. Whidder they be admitted Free-burgesses therein, or not; Providing alwayes that it sall be lesum to his Hienes, notwithstanding of the said Act, to exeeme from the saidis taxations watching and warding, an person of ilk craft, for his Hienes particular use and service, in-case his Majestie finde it gude and expedient to be done. And sik-like, that this Act be not prejudiciall to the members of the Colledge of Justice, and to their priviledges and immunities granted unto them, or whereof they have bene in use in times by-gane.<sup>167</sup>

76. *Exercise of craftes, within sub-urbs adjacent to Burrowes, is forbidden.*

ITEM, For-sa-meikle as the exercise of craftes-men, in the sub-urbes of the free-Burrowes, is not only hurtfull to all our Soveraine Lords Lieges for the insufficiencie of the wark, but also ministratis great occasion to Prentises and servants in free-Burrowes, un-dewtifully to leave their Maisters: and to remaine and abide in the saids sub-urbes, thereby substracting themselves, fra the jurisdiction of the Provest and Baillies of the saides Burrowes. And als the free craftes-men, resident within the saids Burrowes, are greatly damnified, seeing they beare ane great part of the charges of the Burgh, and the advantage of the wark, that suld relieve them is drawn away to the saids sub-urbes: Therefore our Soveraine Lord, and haill Estaites of this present Parliament, statutis, declaris and decernis that in all time cumming, there sall be na exercise of craftes in the sub-urbes adjacent to the saids Burrowes: But that the samine sall cease in all times hereafter: And that it sall be leasum to the Provest and Baillies of the saids Burrowes, and their deputes and officiares, to intromet with all the warkes that sall be found wroucht, or in working: quhidder the materiales thereof apperteine to the craftes-man him-

<sup>166</sup> In reference to this act, see Hume, vol. ii. p. 229-30, and Alison's Practice, 250-1.

<sup>167</sup> In reference to this act, which was ratified by 1594, ch. 35, and 1681, ch. 137, and also in reference to acts 46 and 47, of 1597, see General Report of the Commissioners appointed to inquire into the state of Municipal Corporations in Scotland, and published in 1835, pages 43-46 inclusive. See also *Magistrates of Edinburgh v. Marshall and Sons*, 18th February 1836, S. & D. 554.

selfe, or to quhat-sumever person, and to escheit the samine, to be applyed to the commoun warkes of the Burgh nixt adjacent to the saids sub-urbes.<sup>168</sup>

89. *It is leasum to laik Patrones to dispone their Prebendaries and Chaplanaries to Studentes : Benefices of Cure, pertaining to the saids Patrones, and served be Ministers, payis na thrid.*

OUR Soveraine Lord and Estaites, presentlie convened in Parliament, ratifies and apprievis the Act of Parliament, maid in his Hienesse minority, and first zeare of his raigne, npon the fiftenth day of *December*, the zeir of God, ane thousand, five hundreth, threescore seven zeires : Intitulat anent the disposition of *Provestries Prebendaries, and Chaplanaries to Bursares, to be founded in the Colledges pertaining to laik Patrones* ; And willis and declaris, that the haill poyntes, articles and provisiones, contained in the said Act, sall be halden as expressed herein, with this addition ; That the saids Bursares, Studentes and Titulars, lauchfully provided to the saids Prebendaries, Chaplanaries, sall bruik, joyis and possesse in all time hereafter : Like as they had sufficient richtes to bruik, sen the dait of their provisiones, The haill rentes, profites and emolumentes, contained in the auncient foundationes, maid be the said laik Patrones ; notwithstanding quhat-sumever provisiones, or particular use, to the quhilk the haill, or ane part of the same war distinat used or bruiked, in time of *Papistry*, and before the Reformation of Religion : And notwithstanding quhat-sumever Act, statute, constitution, disposition, gift or presentation following there-upon, maid be his Hienesse at any time heretofore : Likeas his Majesty, with advise of the saids Estaites, and haill body of this present Parliament, expresly declaris, that it was never his Majesties intention, ather to prejudge the saids laik Patrones, in their Parsonages : or the Person provided to the saids Prebendaries and Chaplanaries : of ony part of the fruites and emolumentes, contained in the auncient foundationes, maid be the saids laik Patrones ; Bot as before heartely requestis the saids Patrones, to dispone and present their saids Chaplanaries and Prebendaries, to sufficient and qualified Persones, as they wald godlynesse & gude letters to flourish within this Realme, to Gods glory, and profite of this age, and the posterity. And attour, our Soveraine Lord, and his Estaites in Parliament, declaris that the Benefices of Cure, being laik Patronages, provided to Ministers actually serving, and making residence at the proper Kirkes of the same Benefices, sall not be subject in time cumming, to the payment of ony thriddes, foorth of the same : bot the the same thriddes to be be retained be them, as a part of their awin living and stipend.<sup>169</sup>

<sup>168</sup> In reference to this act, see *Town of Perth v. Weavers of Bridgend of Perth*, 21st July and 14th December 1669, M. 1905 ; *Laird of Polmaise v. Tradesmen of Stirling*, 7th July 1671, M. 1907. The act was found, however, to be in desuetude in *Paterson v. Just*, 6th December 1810, F. C.

<sup>169</sup> The part of this statute which enacts that resident ministers should not be liable for the thirds, is now superseded by the present arrangement for the payment of ministers' stipends. The rest of the act was ratified along with 1567, ch. 13, by 1661, ch. 331, which see. See also Ersk. b. i. tit. v. § 12.



## APUD EDINBURGH,

III DIE APRILIS, A.D. M,D,XCIII.

8. *Ministers glebes suld be designed foorth of ony Kirk-lands.*

ITEM, It is statute and ordained, quhair there hes bene na glebe of auld, or quhair there has bene some of auld, zit it be farre within the quantity of four aikers of Land, that the designation be maid of the Parson, Viccar, Abbot or Prioress Landes: And failzeing thereof, out of the Bishoppis landis, Friers landes, or ony uther Kirk-landes, lyand within the bounds of the said Paroche, ay and quhill four aikers of land be compleit.

ITEM, That the saids glebes be designed with freedom of foggage, pastourage, fewall, faill, diffat, loning, frie ischue and entry, and all uthers priviledges and riohtes, according to use and woont of auld.<sup>170</sup>

13. *Additiones to the paines of Law-borrowes.*

IT Is statute and ordained, be OUR SOVERAINE LORD, and the three Estaites, that in time cumming, the paines and unlaues of Law-borrowes, or for none-again-bringing of letters to the Justice-Clerke and his deputes: or for none-compeirance before the Justice after soverty found: sall be for every Erle or Lorde, twa thousand pundes: For every great Barronne, ane thousand pundes: For every Free-halder, ane thousand Markes: For every Fewer, five hundreth Markes: For every Zeaman-man, ane hundreth Markes: For every Gentle-man-un-landed, twa hundreth Markes: Of ilk person summoned to pass upon assise befor the Justice, ane hundreth Markes: And that the Justice Clerke and his deputes, receive sovertie, according to the saidis paines in time cumming, and na uther-ways, as they will answeire upon the dewtie and execution of their offices. And the saids paines of Law-borrowes, to be divided equally betwixt the King and the partie offended unto; conforme to the act maid upon of before. And that the un-law of all per-sones arreisted, and not compeirand at the first Justice aire, over all the Realme in time cumming, sall be twenty pundes.<sup>171</sup>

22. *The paine of them that troubles the Parliament, Session and uther Judgements.*

IT Is statute and ordained be OUR SOVERAINE LORD, And Lordes of Articles of this present Parliament; That quha-sa-ever sall happen at ony time hereafter, to strike, hurt, or slay ony person within his Hienes Parliament house, during the time of halding of the Parliament, within the Kingis inner Chalmer, Cabinette, or Chalmer of presence; The Kingis Majesty for the time being within his Pallace, or within the inner Tol-buith, the time that the Lordes of Session sittis, for administration of Justice; Or within the Kingis privy Councell-house, the time of the Councell sitting there; Or quha-sa-ever sall happen to stricke,

<sup>170</sup> In reference to this act, see Erskine, b. ii. tit. x. § 59, *et seq.*: Dunlop on Par. Law, p. 107, *et seq.*, and 118, *et seq.* See also subsequent acts referred to by Mr Dunlop, particularly 1594, ch. 9, and 1605, ch. 6.

<sup>171</sup> In reference to this act, Mr Erskine remarks that, from special circumstances, the precise sums stated in it are sometimes raised higher by the Judge, and sometimes restricted. See Ersk. b. iv. tit. i. § 16.

hurt or slay any persone in presence of his Majesty, quhair-ever his Hienesse sall happen to be for the time, sall incur the pain of treason : and sall be accused therefore, as committers of treason and lese-majesty.

AND Sik-like, statutis and ordainis, that quha-sa-ever sall strike or hurte in any time hereafter ony person, before our Sovereine Lordis Justice, or his Deputes, sitting in Judgement, or within the inner zette of the Kingis Pallace, quhair his Hienesse sall make his residence for the time ; Or within the utter Tolbuith of *Edinburgh*, the time that the Lordes of Session sittis for administration of Justice, sall incur the pain of death, and sall be accused criminally therefore.

AND Als statutis and ordainis, that quha-sa-ever at any time hereafter, sall strike or hurt ony person, before the Baillies of Burghes, Commissares, Schireffes, Bailles of Royalties and Regalities, and uther inferiour Judges within this Realme, they or ony of them sitting in judgement, sall pay ane hundreth poundes, to be employed at the discretion of the Judge offended, and be imprisoned in their persones, during the Judges will ; But prejudice alwaies of the priviledges granted be quhatsumever statute or Actes of Parliament of before, to the Provost and Baillies of Burrowes, or quhatsumever inferiour Judges.

AND Last it is statute and ordained, that wha-sa-ever sall strike or hurt ony Judge within this Realme, sitting in Judgement, sall incurre the paine of death, and be accused criminally therefore.<sup>172</sup>

25. *That the writer insert his name in the bodie of the writte.*

OUR SOVERAINE LORD, And Estates of this present Parliament, understanding perfetly, that falsettes in-creasis daily within this Realme : And specially, be the writing of the bodies of the contractes, chartoures, obligationes, reversiones, assignationes, and all utheris writtes and evidentes, be the hand-writtes of sik persones, as ar not commonly knawen, and ar not common notares, nor bruikes na common Office, as writers within this Realme : And gif the writer were knawin the samine wald give great light to the tryall of the truth of the falsed of the said writ and evident : Therefore his Hienesse, with advise of the saids Estaites in Parliament, decernis and declaris, that all original chartoures, contractes, obligationes, reversiones, assignationes, and all utheris writtes and evidentes to be maid hereafter, sall make special mention in the hinder end thereof, before the inserting of the witnesses therein, Of the name, surname, and particular remaining place, diocese, and uther denomination of the writer of the body of the foresaid original writtes and evidentes : utherwais the same to make na faith in Judgment, nor out-with in time cumming : And to begin upon the first daye of *November*, nixt to-cum.<sup>173</sup>

<sup>172</sup> The first enactment contained in this statute is now superseded by the English treason law. The crime of killing any of the Lords of Session or Justiciary, while sitting in judgment is made treason by 7th Anne, ch. 21, § 8. In reference to this act otherwise, see Hume, vol. i. p. 405, *et seq.*

<sup>173</sup> The court originally, in interpreting this act, allowed the omission of the writer to be supplied by condescending on him, and proving who he was. But this was rectified by 1681, ch. 5, which declared all deeds with such an omission to be null. See 1681, ch. 5, and Tait's Law of Evidence, p. 99. See also *Earl of Fife v. Duff*; 22d Dec. 1825, 4 S. & D., and appeal case *Duff v. Earl of Fife*, 22d May 1826; *Wilson and Shaw's Reports*, vol. ii. p. 166.

34. *Decretes given within Burrowes, suld receive execution, be letters of horning.*

ITEM, Because there is no execution on Borrow actes, bot only wairding and poynding, Quhilk is not only a great trouble to the Magistrates, bot hurt and defraud to the party; In respect that sindry absentis their geare: utheris respectis not warding: And that the suiting of letters conforme, is baith sumptuous to the persewer, and hindersum; the decreetes beand given oftymes of small summes: Therefore OUR SOVERAINE LORD, with consent of the Estaites, decernis that the Lordes of Councill and Session, sall direct letters of horning on all decreetes and acts, given be Provest and Baillies of Burrowes *inter concives*; and all uthers subject unto their jurisdictiones, upon the sight thereof, and execution of the officiares, chargeing the party to make payment within fiftene daies, like as it is granted upon Commissars precepts: And that the saids letters of horning, proceede upon a simple charge of ten daies allenerly.<sup>174</sup>

39. *The Commoun good of Burrowes suld be roiped, and imployed to the Commoun weill of the Burgh.*

OUR SOVERAINE LORDE, With advise and consent of the Estaites in this present Parliament hes decerned, concluded and ordained: and be thir presentis, decernis, concludis and ordainis that the commoun gude and Patrimony of all Burghs within this Realme, sall be zeirly bestowed, at the sight of the Magistrates and Councill of the saidis Burrowes, to the doing of the commoun affaires thereof allannerly, after the zeirly roiping and setting thereof, as use is: conforme to his Majesties former actes and statutes, maid anent the imploying of the commoun gude within the saidis Burrowes: And that the samin be na uther-wise bestowed or converted to quhat-sum-ever use, or alteration, maid there-anent, in hail or in part: Notwithstanding of quhat-sum-ever Commission, charge of direction, given be his Majesty, at any time heretofore, be procurement of particular parties in the contrair: And notwithstanding quhat-sum-ever statute, ordinance or decreete following or preceeding thereupon: Quhilks commissions, charges, decreites and ordinances, with all that hes followed, or may follow thereupon; his Majestie with advise foresaid, expressly reducis, retreats and rescindis be thir presentes: And ordainis publicatioun to be maid hereupon, to all and sindrie his Hienesse Leiges, that nane of them pretend ignorance, in forme as effeiris.<sup>175</sup>

## APUD EDINBURGH,

XXII DIE APRILIS, A.D. M.D.XCIV.

6. *For provision of commoun Kirkes.*

OUR SOVERAINE LORD, and his Estates in this present Parliament, decernes and declairs, all common Kirkes to be of the same nature of uther Parsonages and Vicarages: And ordains the same common Kirkes to be conferred be presentation of the lauchful Patrone, and sufficient collation to Ministers, serving thereat, seeing they are benefices of Cure.

<sup>174</sup> The induciæ are now fifteen days instead of ten. This act was ratified by 1606, ch. 9.

<sup>175</sup> This act is extended, and the subject farther regulated by 3d George IV. ch. 91.

9. *For reliefe of them, quhais landes are, or sall be designed for Manses and Glebes to Ministers.*

OUR SOVERAINE LORD, and Estaiteis of this present Parliament, understanding that there are sindry fewares and possessours, having Kird-landes neir adjacent to the Kirk, quhair there hes bene na manses nor gleibe of auld, nor zit designed of new, and considdering, that it were baith against reason and gude conscience, that their suld be ane gleibe designed onely of the saids Kirk-landes, that perteinis to ane Fewar and possessour, and not of the rest, and specially quhair the haill Landes within the Parochin, or ane great part of the saids lands are alike halden of the Kirk, and payis the like dewty.

THEREFORE, to the effect, that the Ministers may be the better answered of their manses and gleibes in time cumming, and enter thereto but ony trouble or contention, conforme to the former acte of Parliament, maid anent Manses and Gleibes of the Ministers, statutis and ordainis, that where designation of Manses and Gleibes beis maid and tane of Kirk-land, (the haill parochin, or ane great part thereof being Kirk-land: And the Minister notwithstanding designed to the Kirk-land, maist ewest and adjacent to the Kirk) That the fewars, possessours and tackes-men, out of quhais landes the Manses or Gleibes are designed; sall have their reliefe of the remanent Parochiners, quha are fewars, possessours, and tackes-men of Kirk-landes, lyand within the said Parochin *pro rata*.<sup>176</sup>

15. *Anent leeing-makers and authoris of slaunders.*

OUR SOVERAINE LORD, With advise of his Estates in this present Parliament, ratifies, apprievis, and for his Hienes and his Successours perpetuallie confirms the Act, made be his noble Progenitors, King JAMES the first, of worthy memory against leeing makers: the Act made be King JAMES the secunde, Intitulat, *against leeing makers and tellers of them*. The act made be King James the Fifth, Intitulat, *Of leeing makers*, and the Act maide be his Hienes selfe, with advise of his Estates in Parliament, upon the twenty two day of *Maij*, the zeire of God, ane thousand, five hundredth, fourscore foure zeires, Intitulat, *for the punishment of the Author of slaunders*, and untrue calumnies against the Kings Majesty his Councell and proceedings, to the dishonour and prejudice of his Hieness Progenitors Crown, & Estate. As likewise the Act of his Hienes Parliament, halden at *Linlithcow*, upon the tenth day of *December*, the zeir of God, ane thousand, five hundreth, fourscore five zeirs, Intitulat, *Against the Authors of slanderous speachis or writtes*. And statutis and ordaines all the saids Acts to be published of new, and to be put in execution in time cumming, with this addition. That quha ever heares the saids leesings, calumnies, or slanderous speeches or writtes to be made, and apprehends not the authors thereof, if it lye in his power, or reveilis not the same to his Hieness, or ane of his privie Councell, or to the Schireffe, Stewart, or Baillie of the Schire, Stewartes in Regality or Royalty, or to the Provest, or ane of the Baillies within Burgh, be quhome the same may cum to the knowlege of his Hienes or his saide privy Councell, quhair throw the said leeing makers, and authors of slanderous speeches may be called, tryed, and punished according to the saids Acts. The hearer and not apprehender, and (gif it lye in his power) conceiler and not reveiler of the saids leeing makers, and au-

<sup>176</sup> See note annexed to 1593, ch. 8.

thors of the saids slanderous speeches or writtes, sall incurre the like paine and punishment, as the principal offendour.<sup>177</sup>

*22. Anent the declining of the Senatoures of the Colledge of Justice, quha ar Father, Brother, or Sone to the parties.*

OUR SOVERAINE LORDE, with advise of his Estaites in this present Parliament, statutis and ordains, that na Senatoures of the Colledge of Justice, ordinar or extraordinar, sall sit, or vote in ony actione or cause intended, or to be intended before them, quhair the parties persewer or defender, is either their Father, Brother, or Sonne: swa that the Father sall in no wise be Judge in the Sonnis case, the Sonne in the Fathers case, nor the Brother in the Brothers, bot be declined therein.<sup>178</sup>

*24. That nane sall be compelled to produce procuratories or instruments of resignation, precepts of clare constat, or uthir precepts of seasing of landes or annual-rents, possessed be them before the space of fourty zeires.*

OUR SOVERAINE LORD, And Estates of this present Parliament, understanding that sindrie of his Hienes Lieges, are heretably infest in divers lands, and annualrents within this Realme, likeas their Predecessors and Authors, fra quhome their richts thereof proceeds, hes beene heretably infest in the samine Landes and annual-rentes: And be vertew of their several infestments and life-rents therein reserved, they and their Predecessours and Authors, hes bruiked the foirsaidis lands and annual-rentes be the space of fourtie zeires togidder: Notwithstanding quhair of, the saids infestments, made and granted to them and their Predecessours and Authors, are sundry times drawn in question, for laik and want of procuratories of resignation, instruments of resignation, precepts of *clare constat*, or uthers precepts of seasing, quhilks are not extant to be produced and used, in respect the samine are tynt and amitted, partly be iniquity of time, partly be perishing of protocollis and scrolles of notares: partly for none-delivering of the samine, be the persones sellares, and disponers thereof: partly because the evidents of comprised Landes uses to be abstracted and with-halden upon malice of parties: and partly, as evidents not thocht necessar to have bene keeped after sa lang time: Be reason that the Chartoures makes mention of the procuratories and instruments of resignationes, and instruments of seasing makes mention of the precepts of seasing, quhair-upon the samine proceeds. For remeide quhair of, OUR said SOVERAINE LORD, with advise of his saids Estates, and hail body of this present Parliament, findes, decernes, and declares, that nane of his Hienes Lieges, may be compelled, after the space of fourty years, to produce procuratories or instruments of resignation, precepts of *clare constat*, or uthers precepts of seasing of lands, or annual-rentes, quhair of the present heretable possessours and, their predecessours, and authoures, and uthers persons be vertew of life-rentes reserved in the saides infestments, are, and was in possession be the space of fourty zeires togidder, and that the wanting and in-laik thereof, nor nane of them, sall be na cause

<sup>177</sup> The punishment applicable to this class of crimes is modified by 6th Geo. IV. ch. 47, and 7th Will. IV. ch. 5.

<sup>178</sup> This act is extended by 1681, ch. 79, which see. See also Erskine, b. i. tit. ii. § 26.

of reduction of the infeftments granted to the proprietares, or their Predecessours or authors of the lands or annual-rents quhair of the charter or charters (makand mention of the resignation or resignations to have been made, and the instruments of seasing, makand mention of the precepts of seasing, bevertew quhair of the seasings were given) are extant. And wills, statutes, and ordainis, that this Act sall be extended to all procuratories, and instruments of resignation, precepts of *clare constat*, or uthers precepts of seasings, the wanting and in-laik quhair of, nor nane of them, sall be na cause of reduction, nor uther quarrel quhat-sum-ever, after the space of forty zeires, quhair infeftments hes tane effect be possession, be the said space of forty zeires, in manner abone rehearsed, and quhair the charters and Instrumentes of seasing are extant as said is.<sup>179</sup>

26. *Anent the bying of landes and possessiones dependand in pley, be Judges or members of Courts.*

OUR SOVERAINE LORD, and Estates of this present Parliament, statutes and ordaines, that in time cumming, it sall not bee leisum to onie Lordes of the Session, ordinar, or extraordinar, Advocates, Clerkes, Writers, their servandes, or any uther member of the Colledge of Justice, or any inferiour judgements within this Realme, their Deputes, Clerkes, or Advocates, directly or indirectly, be themselves, or any utheris in their names, to their behove or utility : To buy any landes, teinds, rowmes or possessiones, quhilks ar dependand in controversie or question betuixt any parties, or hes bene dependand, and not as zit decided : Quhilks gif they or any of them do, and contraveens the premisses : The saids Lordes of Session, Advocates, Clerkes, writers, their servandes, or any uther member of the Colledge of Justice, or any inferiour judgements within this Realm, their Deputes, Clerks, and Advocates, sall amit and tine their office, place, and all privilegedges and immunities bruiked, or that may be bruiked be them, be vertue thereof.<sup>180</sup>

27. *That caution be found in actiones of ejection.*

OUR SOVERAINE LORD, with advise of the Estaites of this present Parliament, understanding the great disordour, quhilk hes risen, and daily dois arise, amongst his Hienesse lieges, quheras persons wrangously intrusing themselves in the rowmes and possessiones of utheris, be bangstry and force being altogidder unresponsal themselves, mainteinis their possession thereof : And quhen they ar challenged before the Lordes of the Session, or uther Judges ordinar, be the party grieved ; The persones intrusers of themselves in sik possessiones, delayis the matter be preponing of peremptour exceptions, quhilk are not of verity, and delays upon the probation thereof : And after lang pley, quhen as the party grieved hes gotten decreet, ordaining him to be repossessed to hes rowme and profite thereof, his party being unresponsal altogidder, gettis na commodity thereof : for remeid of the quhilk ; It is statute and ordained, that in all time cumming, the party persued be an uther for ejection, sall find caution for the violent profite, as in causes of

<sup>179</sup> The doctrine of the long positive prescription originates in this act, and is farther regulated and established by 1617, c. 12, which see, and note thereon ; also see Erskine, b. ii. tit. vii. § 25 ; and Bell's Principles, § 2002.

<sup>180</sup> In reference to this act, see Stair, b. i. tit. xiv. § 2 ; Bell's Dict. and Dig., arts. " Pactum illicitum " and " Buying of Pleas ; " Purves v. Keith, 20th December 1683, M. 9500 ; Home v. Home, 15th December 1713, M. 9502.

removing, the first diet of *Litis-contestation*, or utherwaies decreete to be given, ordainand the party to be repossessed.<sup>181</sup>

### 30. *For punishment of Parricide.*

OUR SOVERAINE LORD, and Estaites of this present Parliament, understanding the abhominable and odious cruelty, that hes bene at sum-times heretofore used within this Realm, be Children against their parentes, in murthering of them, and takand of their lives most unnaturally; Hes therefore statute and ordained, that quhat-sum-ever he be, that hes slaine, or sall hereafter slay his Father or Mother, Gud-schir, or Gud-dame, and hes bene already, or sall be hereafter convict be ane assise: The committers of the said crime, and his posterity *in linea recta*, sall be disherished in all time hereafter, fra their landes, heritages, tackes, possessiones: And the samine sall apperteine to the nixt collateral and nearest of Blood, quha urtherwise nicht succede failzieng of the richt line.<sup>182</sup>

### 32. *For punishment of Committers of Vsury.*

FORSAMEIKLE As Usury and ocker is ane great crime, condemned be the Laws of God and all commoun wealths, and zit hes bene over frequently used within this Realme, thir diverse zeires bygane, throw want of a certain pain and punishment: Therefore our Sovereine Lord, with advise of his Estates in this present Parliament, statutes and ordaines, That quha ever commits usury, or ocker in time cumming, directly or indirectly (that is to say) takes mair profite for the leane of the money, nor as it cummis to ten pundes in the zeir, for a hundreth pundes, or five bolles victual, And swa *pro rata*, quhiddir the same be great or smal, upon wedde, pledge, or obligation, act or contract afore hand, or after the zeir or time, sall be counted and esteemed Usurers and ockerers, and the party payer, or oblist for the said unlauchful profite, reveiland the same, sall have repetition of his pledge, wedde, or discharge of his obligation, act or contract, for his rewarde: And if the party payer concealis the payment thereof, quhat-sum-ever uther man that reveiles and veriefies the saide ocker, sall have the saide benefite and richt to the summes of money given for ocker, as the giver might ha had, in case heve had reveiled it himself: & the party receiver of the said unlawfull profit, or contractor thereanent, to tine the principal sum and stock, quhilk was employed be him for payment of the said unlawfull profit and ocker.<sup>183</sup>

### 35. *Anent the priviledge of Burrows.*

OUR SOVERAINE LORDE, with advise of his Estates in this present Parliament, ratifies, appreives and confirms, the act and statute maid in his Hieness Parliament, halden at *Edinburgh*, upon the fifth day of *Junij*, the zeir of God, ane thousand, five hundreth, fourscoire, twelve zeires: In favours of the free Burrows of this Realm, and their liberties and priviledges, against un-free trafiquers: and anent using of craftes in all the sub-urbes, of the saids Burrows: specially bearing, That all maner of persons, inhabitants of the saids Burrows,

<sup>181</sup> In reference to this act, see Stair, b. iv. tit. xxviii. § 8, and art "Ejection and Intrusion" in Bell's Dict. and Digest.

<sup>182</sup> In reference to this act, see Hume, vol. i. p. 290, *et seq.*

<sup>183</sup> In reference to the subject of this act, see 1597, ch. 18, 1600, ch. 15, 1621, ch. 28; and 12th Anne, Sess. 2, ch. 16, by which it is farther regulated.

exerceand ony maner of traffick in merchandice, or havinge exchange within the same: sall beare their part of all stents and taxations, watching and warding, in all dewties pertaining to our Sovereine Lord, the weil of the Realme, and utility of the Burgh, as at length is contained in the said Act, and all clauses and conditions therein contained: with this addition, that the samin sall be extended to all Merchands or Craftes-men, alseweil free as unfree, that has na uther dwelling place but within Burgh, and hes their commodity within the same Burgh, and bearis na burden of taxation without the same Burgh.<sup>184</sup>

36. *Anent the uphalding of the decayed landes within Burgh.*

OUR SOVERAINE LORD, With advise of his Estaites of this Parliament, ratifies and apprieves the actes and statutes, maid be his Hienesse maist Noble Progenitours of worthy memory, concerning the uphalding of Landes, given in conjunct infestment, alsweil to Burgh as Land: And for the better execution thereof and reparation of the decayed policy within Burgh, statutis and ordains: That the Provost and Baillies of ilk burgh, sall at the instance of the heretoures of the landes within the samine, upon citation of the party, take summar cognition of the estaite of the landes, houses, or tenementes within the Burgh, be ane condigne inquest of the Nichtboures thereof: and gif the samine be found aulde, decayed, and ruinous in ruife, sclaites, dures, windowes, fluring, loftis, tymmerwark, and walles, or ony of them, and ane land bigged of auld, throw lang time decayed, in sik sort that it be already inhabitable, or that within short time may become inhabitable, in that case, to decerne that the conjunct fear or life-renter sall repair the saids landes, and tenementes in the partes thereof decayed, as sall be found be the said inquest, within the space of zeir and day, nixt after they be required thereto be the heretours: and failzeing thereof, declaris that it sall be free to the said heretour, to enter to the possession of the same, to have the setting, raising, using, and disponing there-upon, in all time cumming, as gif there were na life-rent, or conjunct-fee standing thereof. Providing alwayes, that sufficient security in the Burgh quhair the landes or tenementes lyis, be tane, for termly payment to the conjunct-fears or life-renteris thereof, induring their lifetime of sik mail and dewty, as the samine presently gives the time of the said cognition, or micht reasonably give in that estait, in-case it be not presently set, deduceand alwayes the annuallies, and uther burding lyand there-upon. And this to be extended to all brunt and waist landes, and against all conjunct-fears present and to cum within Burgh.<sup>185</sup>

APUD EDINBURGH,

I DIE NOVEMBRIS A.D. M,D,XCVII.

3. *Kirk-zairde dykes suld be bigged.*

OUR SOVERAINE LORD, and Estates in Parliament, statutis, decerns and ordains: That all Parochiners of every Paroch Kirk within this Realme, build and repaire the Kirk-zairde dykes of their awin Paroch Kirk, with stane and morture, to the hight of twa elnes: And to make sufficient stiles and entresse in

<sup>184</sup> The act here ratified is 1592, ch. 75, which see, and note annexed thereto.

<sup>185</sup> In reference to this act, see art. "Houses" in Bell's Dict. and Dig., and authorities there referred to. See also 1663, ch. 12.



the saids dykes, to pass to the Kirk and Kirk-zaird thereof: And ordainis the Lordes of the Session to direct and give letters and charges thereupon, in forme as effeirs.<sup>186</sup>

17. *All fewes may be decerned null, for not payment of the dewty, albeit na provision be maid there-anent in the infeftments.*

OUR Sovereine Lord, and Estaites of this present Parliament, haveand consideration of the greate damage and skaith, quhilk his Majesty and lieges of this Realme susteinis, throw evill and untimous payment of the few-dewties of their landes, set in few-ferme: Therefore statutis and ordainis, that in-case it sall happen in time cumming ony vassall or fewar, haldand landis in few-ferme, of our Sovereine Lord, or of ony uther superiour immediatly in few-ferme, to failzie in making of payment of his few-dewty to our Sovereine Lordis Comptroller, or uther havand power of him, or to uther immediate Superiour, or uthers haveand power of him, be the space of twa zeires, haill and togidder: That they sall amitte and tine their said few of their saids lands, conforme to the civill and cannon Law: Sik-like and in the same manner, as gif ane clause irritant were specially ingrossed and insert in their saids infeftmentes of few-ferme.<sup>187</sup>

18. *It is not leasum to take mair annuall-rent or profite, nor Ten for the hundreth.*

OUR SOVERAINE LORDE, And Estaites of this present Parliament, haveand consideration, that exorbitante profite and userie taken for the lene of money, Is nocht only be the Lawe of GOD condemned, bot alsua is forbidden be the Lawes of this Realme, and Actes of Parliament: Therefore statutis and ordainis, that nane of our Sovereine Lords lieges take upon hand in ony time hereafter, to take ony greater profite, or annuall-rent, for the lene of money, outhir be infeftment, or be band or contract, directly, or indirectly, bot Ten for the hundreth, under the pain of confiscation of all their moveable guddes and geare: And to be utherwayes punished in their persons, as commoun ockarers, according to the Lawes: And for that effect, to be called and persewed at particular diettes, before the Justice and his deputes, to underly the Lawe for the samine: And that all infeftmentes, contractes, and obligationes to be maid in time cumming, for payment of annuall-rent of victuall: That the victuall therein contained, sall be reduced to sik conformity of price, as sall answer to Ten for the hundreth allanerly: Swa that the party addebted, payand Ten for the hundreth, the samine sall be als lauchfull, as gif they had payed the victuall contained in the saids infeftments. And because there is diverse persones, quha obteneis themselves infeft in the property of landes, for small summes of money, under reversion: and settis tack back againe to the Heretour, or uthers to his behoove, for payment of ane great dewty in silver or victuall, far exceeding the profite of Ten, for ilk hundreth: As alsua be contract, band or obligation, makis simulat forme of byeing or selling victuall, to be delivered at ane certaine day, and failzeing thereof; certaine high prices liquidat therein, of intention onely in defraud of the said act, to recover with their principall summe, sik exorbitant ocker and profite, as is directly forbidden herein: As likewise there is diverse persons quha the time of the debursing of the said summe, quhilk they let to profite, aggries with the party for the usury and ocker: far exceeding the ordinar annuall-rent foresaid, and reteinis

<sup>186</sup> In reference to this act, see Dunlop's Parochial Law, p. 71, *et seq.*

<sup>187</sup> In elucidation of this act, see Ersk. b. ii. tit. v. § 26, *et seq.*; and art. "Tinsell of Feu," in Bell's Dict. and Dig., and authorities there referred to.

the same in their handes, and takis their security be plain forme of obligation, or utherwayes of the hail summe to be payed at ane certaine terme, as gif na sik exorbitant profite and ocker had bene deduced or allowed therein: Therefore statutis and ordainis, that all sik infestments, bands, contractes, or obligationes, quhilk sall happen to be maid, in maner foresaid, in defraud of the said acts and statutes, and for circumvention of the lieges, astrictand them to pay farder profite in silver, not according to Ten for the hundreth; or mair victuall, nor may be answerable in price, to the annuall-rent in silver foresaid, in manner abone specified, sall be null, and of nane availe, force nor effect, as gif the samine had never bene maid: Notwithstanding quhat-sumever uther culloured or pretended clause be insert therein: And the said nullity upon the causes foresaid, to be received summarly, alsweill be way of exception and reply, as be way of action, and to be tryed be the aith of party, and all uther lauchfull probation conjoynd therewith, competent of the Law: quhairby the said un-lauchfull ocker may be verified to the Judge, and the said nullity to be persewed be the party, his aires, executores, and assignayes: with concurrence of the Kings Advocate, against the creditour, his aires and executores: Notwithstanding quhat-sumever ratification of the bande and infestment, or renunciation of the said action, granted be the party, quhairin it sall nocht be leasum to him to transact, without his Majesties consent and licence granted to that effect: And the said infestment, band and obligation being reduced, the Kingis Majesty and his donatour to have undoubted richt to the principall summe quhilk was delivered, togidder with the ordinar annuall-rent, of all zeires & termes by-gane unpaid: & the party to have repetition of quhat-sum-ever exorbitant profite he hes payed, exceeding the ordinar annual foresaid, in-case he concur with his Hieness Advocat in the said reduction, utherwayes to be debarred from the repetition of ony summes payed be him: The Kings Majesty alwayes, his Advocate and donatour to have full richt in their persones, to persew the reduction, and annulling of the saids securities, for the causes foresaid, albeit the principall party refuses to concur with them therein.<sup>188</sup>

35. *Letters of horning, inhibitiones, interdictiones, executiones, and publications thereof, against persones dwelland within Bailleries, suld be registred in the Baillies buikes.*

OUR SOVERAINE LORD, And Estates of this present Parliament, statutes and ordaines, that all letters of Horning, relaxations, inhibitiones, interdictiones, and publications thereof, and uthers of the like sorte, that sall at ony time hereafter be raised, and execute against quhat-sum-ever person within this Realme, dwelland within the Bailleries or Stewardries, alsweil of Royalty, as Regality, be execute at the Mercat-croce of the head Burgh, or Toun of the saids Bailleries and Stewardries, within the quhilk the saids persones dwellis: And als that the samin letters be registred in the saids Stewart and Baillies buikes: Quhilk registration, sall be als lauchful in all time cumming, as gif the samine had bene registred in the Schireffes buikes. And that all executions and registrations, that sall happen hereafter to be utherwaies execute and registred, sall be null, and of nane availe, with all that followed thereupon: And ordains, all the general clauses and provisiones, insert and mentioned in the acts of Parliament, maid of before, anent registration of hornings, in the Schireffes buikes, to be halden as expressed and repeted in this present ordinance and constitution.<sup>189</sup>

<sup>188</sup> See note annexed to 1594, ch. 32.

<sup>189</sup> By 1600, ch. 22, hornings, inhibitiones, and interdictiones, may be registered in the Books of Council and Session, which see. See also 1581, ch. 24, and note thereon; and Erskine, b. iv. tit. iii. § 12.

39. *Strang beggers, vagabounds, and Egyptians suld be punished.*

OUR SOVERAINE LORDE, and Estaites of Parliament, ratifies and apprieves the actes of Parliament made of before, against strang and idle beggers, vagabounds, and *Egyptians* with this addition, That strang beggers and their bairnes, be imployed in commoun warkes : And their service mentioned in the act of Parliament, in the zeir of GOD, ane thousand, five hundreth, seventy nine zeires, to be prorogate, induring their life-times : And in place of several commissions in Landward to be granted be the King, for execution of the said act, the power thereof to be granted to the particular Session of the Kirk.<sup>190</sup>

40. *The pains of Law burrows suld be payed be him quha for his disobedience is denounced rebell : The cautioner may be persewed, or the principal.*

OUR SOVERAINE LORDE, And Estates of Parliament, statuts and ordains, that the paines of contravention, sall be payed be the principal party, that is charged to find Law-burrows, albeit he passe to the horne, and finde not caution : and gif he finde caution, that baith he as principal, and als his cautioner sall be subject to the payment thereof, at the option of the persewer, as in all uther pecunial obligations.<sup>191</sup>

41. *The paine of the generall bande, is divided betwixt the King and the partie.*

OUR SOVERAINE LORDE, and Estaites of Parliament, statutes and ordaines, that the pains of contravention of the general bande, sall be divided betwixt the King and the party, in all time cumming.<sup>192</sup>

44. *Prison-houses suld be bigged within all Burrows.*

OUR SOVERAINE LORDE, and Estaites of this present Parliament, understanding that for want of sufficient and sure prisoners, jailles, and warde-houses, sindry rebelles and transgressours of the Lawes, alsweill criminal, as civil, escapis unpunished, and Justice contemned : For remeid quhairof, Our Sovereine Lord and Estaites, hes statute and ordained, that within the space of three zeires, in all Burghs within this Realme, there be sufficient and sure jailles and warde-houses bigged, up-halden and maintained be the Provost, Baillies, Councill, and Communities of the saids Burrowes, upon their awin commoun gude, or utherwayes upon the charges of the Burgh : And that for sure imprisoning, warding, keeping and deteining of all sik persons, transgressours of his Hienes Lawes, upon their awin expenses, alsweill criminal as civil, as sall be presented unto them, be the Schireffe of the Schire, Or Stewardes and Baillies of Regalities, within the quhilk the saids Burghes ar situate, and specially quhair their judicatory sitts : And alswa all uthers persons presented either to warde, be vertew of their awin authority within Burghes, or utherwayes, upon letters of caption directed to them.<sup>193</sup>

46. *Of persones dwelland within Burgh, subject to the helpe of the pair, to watching and warding.*

FOR-sameikle as there is diverse inhabitants that dwells and remains within

<sup>190</sup> This act was ratified by 1600, ch. 28. In reference to both of these acts, see Dunlop's Parochial Law, p. 322.

<sup>191</sup> In reference to this act, see Erskine, b. iv. tit. i. § 18.

<sup>192</sup> See form of Summons for Contravention of Lawburrows in Juridical Styles, vol. iii. p. 96.

<sup>193</sup> This act contains the first legislative enactment concerning the erection of prisons in Scotland, but appears to be entirely superseded by 2d and 3d Vict., ch. 42. As to the state

the free Burrows, with their families, and are of reasonable substance : As alsua hes rents and livings within the samin Burgh, zit refuses to contribute for the interteinement of the puire, watching and warding within Burgh, with the rest of the Nichtbours : or to bear their parte of sik uther dewties, as concerns his Majesties service, thereby living at liberty, neither knawand the Magistrates in Kirk nor policy, To the great hindrance of his Majesties service, and the hail Realme : For remeid quhairof, It is statute and ordained, be OUR SOVERAINE LORDE, and the three Estates of this present Parliament, That all sik as hes their residence and dwelling within the saids Burrows, be their families : And may spend ane hundreth pounds of zeirly rent within the same, or stented be the discreet Nichtbours, to be worth twa thousand *markes* in free guddes : sall be subject to be burdened with the rest of the Inhabitants, for the advancement of the glory of God, his Majesties service, and weill of the Burgh quhair they dwell : Providing alwayes that this act be nawayes extended to sik as are exeemed for his Majesties service, as ane of ilk occupation for that cause : Neither to ony persons that are members of the Colledge of Justice, and admitted be the Lords of the Session.<sup>194</sup>

47. *All Burgesses suld be taxed and stented be their Magistrates, according to the rentes within Burgh.*

OUR Sovereaine Lord, and the three Estaiteis of this present Parliament, understanding that at sik tymes, as taxationes and stentes, occurris within this lande : That the Provost and Baillies of Burrowes ; and sik as they appoynt Stenters within the samine, without all gud ordour and discretion, stentisindry of the Burgesses, inhabitants of the Burrowes, quha hes their special rentes and livinges to Land-wart, out-with Burgh, according to their ability, alsweill to Land-wart as to Burgh, albeit reason and equity wauld crave, that they suld be only stented, according to their rentes, and halding within Burgh : Because their rentes and living lyand to Land-warte, ar stented, with the Barronnes, Gentle-men, and Freeholders within the Shires quhair they lye : It is therefore statute and ordained, that in all time cumming, It shall not be leasum to the Provost and Baillies of Burghes, nor na Stenters within the same, to stent ony persones therein, according to their livinges and rentes lyand out-with Burgh : Bot only according to their rents & halding within Burgh, as they do with uther persones, of their rancke and substance, that hes na rente nor living out-with Burgh, and na utherwayes.<sup>195</sup>

## APUD EDINBURGH,

I DIE NOVEMBRIS A.D. M.DC.

### 12. *Anent invading and persewing of Counsellers.*

OUR SOVERAIGNE LORD, AND Estates of this present Parliament, understanding that diverse of the Lords of his Heighness secret Counsell and Ses-

of the law respecting the management of gaols in Scotland previous to that statute, see General Report of the Commissioners appointed to inquire into Municipal Corporations in Scotland, published in 1835, p. 62, *et seq.*

<sup>194</sup> In reference to this act, see Watson's Statute Law, vol. i. p. 216-17, and authorities there stated. See also note annexed to 1592, ch. 75, and Report there referred to.

<sup>195</sup> In reference to this act, see note annexed to 1592, ch. 75, and Report there referred to.

sion, and others of his Heighness Officers, for discharge of their bounden duety in his Heighness service, incurres the haitred, indignation, malice and feed of sindry persons, who oftentimes quarrels them, without any just cause. Therefore, Statutes and ordeins, that what-som-ever person in time comming, invades or persewes any of his Heighness Session or Secret Counsell, or any his Heighness Officers, it being verified and tryed, that any of the saids Counsellors, Sessioners and Officers, was persewed and invaded for doing of his Heighness service, shall be punished to the death.<sup>196</sup>

15. *Explanation of the Acts of Parliament anent Ocker and Vsury.*

OUR SOVERAIGNE LORD, With advise and consent of the Estates, ratifies and approves the acts of Parliament made against Usury and taking of unlawfull annuel-rent or profite for silver in all poynts, according to the tenour of the samine. And because the obscurity of the act of his Majesties fiftenth Parliament, titulat, *It is not lesome to take mair annuel-rent or profite nor ten for the hundreth*, anent the maner of tryel and probation of the said cryme by eath of party, and all other lawfull probation conjoyned therewith, competent of the Law, hes bred sick difficulty in persute and decision of the saids causes, that Justice thereby hes bene greatly frustrat, and the contraveeners of the said act altogether unpunished.

Therefore his Majesty with advise and consent foresaid, statutes and ordains that in all actions already intended, dependand, or hereafter to be intended against contraveeners of the saids acts, Litiscontestation being made therein, by admitting of the summonds to probation, it shall be lesome to prove the saids summonds and contraveining of the saids acts, or ony of them anent the taking of unlawfull and exorbitant profit, for summes of money, by writte or eath of party receaver of the said unlawfull profite, and be the witnesses insert in the said security made for the said summes, without receaving of the eath of the party giver of the saids unlawfull profit, for eschewing of all occasion of perjury whilk might be suspected to proceed there-upon.<sup>197</sup>

22. *Anent Hornings.*

OUR SOVERAIGNE LORD, and Estaites of this present Parliament, considering the great expenses and fasherie the Lieges of this Realme susteines, by seeking of a Notar and four witnesses, to the registration of all letters of Horning, relaxations, Inhibitions and interdictions, in the Schireffes, Baillies or Stewarts bookes within this Realme; And als susteins great delay by seeking of the Clerks who should registrat the samine.

Therefore OUR SOVERAIGNE Lord and Estaites foresaid, discharges that part of the act of Parliament made in the Moneth of *December* 1597 yeares, anent the registration of the samine letters of Horning, Relaxation, Inhibition and Interdiction, before a Notar and Witnesses. And decernes and declares the samin letters whilks are or shall be registrat in the saids Schireffes, Baillies or Stewarts bookes by the Clerk thereof. Or by the Clerk of Register and his deputes, in the bookes of Councell, shall be valide and sufficient in the selse, and shall make faith in judgment or out-with in all tyme cumming.<sup>198</sup>

<sup>196</sup> In reference to this act, see Hume, vol. i. p. 405.

<sup>197</sup> In connection with this act, see note annexed to 1594, ch. 32; Watson's Statute-Law, vol. ii. p. 397, *et seq.*; and Bell's Commentaries, vol. i. p. 309, *et seq.*; and Erskine, b. iv. tit. iv. § 76-78.

<sup>198</sup> See 1581, ch. 24, and note thereon, and Erskine, b. ii. tit. v. § 56. The act here partly discharged is 1597, ch. 35.

23. *The negligence of the Kings Officers may be supplied by their successors.*

OUR SOVERAIGNE LORD, and Estaites of Parliament, statutes and ordaines, that the sleuth and negligence of any of his Heighnes officers, in the persewing or defending of any of his actions or causes in any tyme bygane or to come; shall nowyse be prejudicial or hurtfull to his Heighnes, but that he and his officers, successors in that office, may without any ordour of reduction, and by way of exception or reply, use and propone all and sundry exceptions, replies and defences competent of the Law, whilks were willingly or negligently omitted by their predecessors. And thereby supplie whatsoever thing that hes bene neglected or omitted by the saids predecessors. To the effect, that his Heighnes and his Crown be no wyse hurt, nor prejudged by negligent Officers, and the benefite of his Lawes may be competent to him at all tymes when it shall please him and his officers to crave and use the samine.<sup>199</sup>

28. *Ratification of the act anent strong and idle beggers.*

OUR SOVERAIGNE LORD, with advyse of the Estaites of this present Parliament, ratifies and confirms the act made by his Heighness and Estaites conveyned at Perth the first day of Aprile last by past, against strong and idle beggers; whereof the tenour followes. The Kings Majesty and Lords of secret Councell, remembering how there hes bene diverse gude and lovable acts of Parliament and secret Counsell, made and published heretofore, for punishment of strong and idle beggers, and releefe of the poore and impotent. And how the saids acts has received little or no effect, or execution by the oversight and negligence of the persones, who were nominate Justices and Commissioners, for puting of the saids acts to full and due execution. And that there was not a special penalty, appoynted and enjoyned to them, who should be remisse and negligent therein. So that the strong and idle beggers being for the most part theeves, bairds and counterfette limmers, living most insolently and ungodly, without marriage or Baptisme of a great number of their children, are suffered to vaig and wander throughout all the hail countrie, and the poore & impotent persons are neglected, & no care had, nor provision made for their entertainment & sustentation. For remeid whereof, and supply of the saids acts, and namely of the act of Parliament made in the yeare of God 1597. Whereby the execution of the acts of Parliament, is committed to the particular Sessions of the Kirk, It is statute and ordained by the Kings Majesty, with advyce of the Lords of his secret Counsell, that the saids Sessions of the Kirk, where need is, shall be assisted by ane or twa of the Presbyteries; and that they shall put the saids acts to full and due execution, conforme to the tenour thereof in all poynts, every an of them within their awne bounds, under the paine of twenty pounds to be exacted of them; so oft as they shall be found to be remisse or negligent herein. And that these presentes shall begine to take effect, and have execution upon the first day of June next to come. And to the effect his Majestie may be the better assured of the care and diligence of the saids Sessions of the Kirk, in the due execution of the saids acts of Parliament, his Majestie commands the hail Presbyteries of this Realme, to take diligent tryel of the obedience of the Sessions heiranent, and to report their certificat and testimonial there-upon to his Majesties Ministers, betuixt and the first day of August next to come. where-throw his Majesty may thereafter proceed against sik as shall be negligent as accords: And that letters of publica-

<sup>199</sup> In reference to this act, see Mackenzie's Observations, p. 311; and Stair, b. iii. tit. iii. § 33; and Erskine, b. i. tit. ii. § 27.

tion be direct here-upon as effeiris; where-throw the said Sessions of the Kirk, nor no other pretend ignorance. And to command and charge the said Sessions of the Kirk to put the saids acts of Parliament made against strong & idle beggers, whereof the execution is committed to them, by the said act of Parliament made in the foresaid yeare of God 1597, to due & full execution in all poynts, conforme to the tenour thereof, betuixt and the said first day of June next to come, under the said paine of twenty pounds to be exacted off them, so oft as they sall be founden to be remise after the said day. Certifying them that failyes, that the said paine shall be uplifted off them with all rigour. And sik-like to command & charge the saids Presbyteries to take tryel of the saids Sessions hereanent, and to report their testimonial there-upon betwixt and the first day of August, as said is. As they will answer to his Majesty upon their obedience at their uttermost charge and perell.<sup>200</sup>

29. *Anent the Mariage of adulterous persons.*

OUR SOVERAIGNE LORD, with advyse of the Estaites of this present Parliament, decernes all mariages to be contracted here-after by any persons divorced for their awne cryme and fact of adultery, from their lawfull spouses with the persons with whom they are declared by sentence of the ordinar Judge to have committed the said cryme and fact of adultery, to be in all tyme comming null, and unlawfull in themselves, and the succession to be gotten be sik unlawfull conjunctions, to be unhabile to succed as heires to their saids parents.<sup>201</sup>

APUD EDINBURGH,

VII DIE JUNIO A.D. M.DC.V. CONTINUED TO M.DC.VI.

6. *Anent Gleibs in Pasturage and sowmes grasse.*

OUR SOVERAIGNE LORD, and Estaites of this present Parliament, understanding that be act of Parliament, anent the designation of Manse and Gleibs to Ministers. It is ordeined, that there shall be four aikers of land designed to ilk Minister for his Gleib next adjacent to the Kirk. And seing that by the iniquitie of tyme and disorder of the Borders and Hielands of this Realme in tyme bygane. There are sundrie Kirks within the same whilk has na arrable land adjacent thereto, but onely pasturage; sa that by the forsaid act of Parliament, made anent the designation of four aikers of land onely for the Gleib of ilk Minister, and na farther; The Ministers serving the cure at sik Kirks as hes na arrable lands adjacent thereto, but only pasturage, are greatlie hurt and defrauded. For remeid whereof, It is statute and ordeined that in all tyme comming, there be designed to the Minister serving at the cure of sick Kirks where there is na arable land adjacent thereto, four sowmes grasse for ilk aiker of the saids four aiker of Gleib land, extending in the hail to sixteen sowmes, for the saids four aikers, and that of the maist commodious and best pasturage of ony Kirk lands, lyand next adjacent and maist nearest to the saids Kirks. And ordeins letters to be direct against the possessours thereof for removing therefra, in the samine forme, as is appoynted by the foresaid act of Parliament, made anent designation of Manse and Gleibs of before.<sup>202</sup>

<sup>200</sup> In reference to this act, see Dunlop on Parochial Law, p. 322. The act here ratified is 1597, ch. 39.

<sup>201</sup> See Stair, b. i. tit. iv. § 7, and b. iii. tit. iii. § 42; and Ersk. b. iii. tit. x. § 9.

<sup>202</sup> In reference to this act, see Ersk. b. ii. tit. x. § 59; and Dunlop on Parochial Law, page 116, *et seq.*

9. *Act anent directing letters of Horning on Schirefs, Stewarts and Baillies decreits.*

OUR SOVERAIGNE LORD, and Estaites of this present Parliament, ordeins for the greater furtherance and better execution of Justice to all his Majesties Liegies, and eschewing of the superfluous and unnecessar charges, whilks they sustein by poynding on decreits, obtained before Schirefs, Stewarts and Baillies, alswell of Royaltie as Regalite, that the lyke letters and execution of Horning be direct and graunted by the Lords of Session, upon all acts, decreits and sentences of Schirefs, Stewarts and Baillies alswell of Royaltie, as Regality, as are granted and direct upon decreits, acts and sentences of Provests and Baillies within Burgh, conforme to the act of Parliament made thereanent, and after the forme and tenour of the samine in all poynts.<sup>203</sup>

12. *Anent laying of Lint in Lochs.*

OUR SOVERAIGNE LORD, and Estaites of Parliament, finding that the laying of Lint in Lochs and burnes, is not only hurtfull to all fishes bred within the samine, and bestial that drinks thereof; but also the hail waters of the saids Lochs and burns, thereby being infected, is made altogether unprofitable for the use of man, and very noysome to all the people dwelling there-about. Therefore statutes and ordeins, that na person nor persons in tyme comming, lay in Lochs and running burnes, any grein Lint, under the paine of fourtie shillings *toties quoties*, for ilk tyme they shall contravein; and als confiscation of the Lint to be applyed to the poore of the parochin, within the whilks the saids Lochs and burnes lyes. And by tenour hereof, gives power to the Session of the Kirk of ilk Parochin, to try, cognosce, and put this present act to execution, and to uplift the unlawes, and confiscat and dispon upon the said Lint, to the weall of the poore of the Parochin, as said is.<sup>204</sup>

13. *Act in favours of his Majesties Vassals for payment of their blench duties.*

OUR SOVERAIGNE LORD, and Estaites of this present Parliament, remembring the great favour shawn and borne by his Heighnes and his predecessours, to the Noble men, Barrons, and others subjects of this Realme, and their predecessours, for their notable and memorable facts and services done to his Majestie and his predecessours, in defence and wealfair of the Realme; in making and graunting to them of heritable infestments of their Lands, Barronies, Lordships, Castels, Towres, Fortalices, Woods, Mynes, Salmond Fishings, offices and others therein contained, halden of OUR said SOVERAIGN LORD, and his predecessours, in free blench-farm, for payment of certaine blench-farme duties, expressed in their infestments; not as any burding or yearlie duetie, but by way of acknowledgement & recognoscence, if the samine duties shall be requyred allanerlie. And that notwithstanding thereof, within thir late and few yeares, the saids Noble-men, Barrons, and others, OUR SOVERAIGNE LORDS Leiges and subjects, wha halds their lands and others foresaids of OUR said SOVERAIGNE LORD in free blench, are yearlie without any just cause burdened, urged and compelled by charges to make payment in his Heighnes Checker of certain sums of money, as for the pryces and valour of the saids blench duties: there being na sik summes of money nor pryces contained in their saids infest-

<sup>203</sup> The act here referred to is 1593, ch. 34.

See 1st and 2d Vict., ch. 114, by which a simple and less expensive method of obtaining personal diligence is made competent.

<sup>204</sup> In reference to this act, see Mackenzie's Obs. p. 324.



ments. For remeid whereof, OUR SOVERAIGNE LORD, with advyce of the saids Estaites, findes, decernes and declares, that the Noble men, Barrons, and others Leiges and subjects, wha holds their lands and others foresaids of his Majestie in blench-ferme, are onely justlie adetted in payment of the blench duties expressed and set downe in their infestments, if the samine be required allanerlie. And that they aught nowyse to be burdened, troubled or charged for summes of money, as pryces for the saids blench duties. And that notwithstanding whatsomever act or ordinance made by the Lords of his Heighnes Checker, or others acts or ordinances whatsomever, of whatsomever years bygane or to come, to the whilks this present act shall make and makes full derogation. And therefore Sir *Thomas Hamilton of Monkland Knight*, Advocate to OUR SOVERAIGNE LORD, in presence of the saids Estaites, protested in his Heighnes Name, that the blench duties and species thereof conteined in the forsaid infestments, be conforme to the Kings Majestie and his Successours, Estate and dignitie. And thereupon the said Lord Advocat asked instruments.<sup>305</sup>

14. *Act anent seasinges to be given on precepts forth of the Chancellarie.*

OUR SOVERAIGNE LORD, and Estaites of this present Parliament, ratifies and approves the act made of before by King JAMES the Fifth of good memorie, whereby it was statute and ordeined, that all Seasinges given by vertue of any precepts direct forth of the Chancellarie, should be given by the Schireffes of the Schyre, Baillies or Stewarts, where the lands lyes their deputes and Clerk, as in the said act of the date the tenth day of *December* the yeare of God, ano thousand, five hundreth, and fourtie years at mair length is contained; In all and sundrie poynts, heads, articles, clauses and conditions of the samine, sa farre as the samine extends or may be extended to Seasinges past upon precepts direct forth of the Chancellary upon Retours allanerlie. And the saids Estaites of Parliament, decernes and declares the samin act made by King JAMES the Fifth of the date above written, to have bene onely made for sik Seasinges as are given by vertue of precepts, that passes upon Retours, and to nane others Seasinges direct upon any other precept, direct forth of the Chancellarie.<sup>306</sup>

16. *Act for staying of unlawfull conventions within Burgh, and for assisting of the Magistrates in execution of their offices.*

OUR SOVERAIGNE LORD, and Estaites of this present Parliament, ratifies and approves all and whatsomever acts made heretofore by his Majesty, and his Heighnes progenitours, and the Estaites of the Realme, for staying of all tumults, and unlawfull meetings and conventions within Burgh. And ordeins the samine to have effect, and to be put to due execution against the contraveeners thereof in all poynts. With this addition, That na person nor persons within Burgh, of whatsomever rank, quality or condition they be of, presume nor take upon hand from this forth, under whatsomever collour or pretext, to convocat or assemble themselves together at any occasion, except they make due intimation of the lawful causes of their meetings, to the Provest and Baillies of that Burgh, and obtain their license thereto; and that na thing be done nor attempted by them in their saids meetings, whilk may tend to the derogation or violation of the acts of Parliament, lawes and constitutions made for the well and quyetness of the saids Burghs. Declaring by thir presents, the saids unlawfull meetings, and the persons present thereat to be factious and seditious, and all proceedings therein to be

<sup>305</sup> In reference to this act, see Erskine, b. ii. tit. iv. § 7.

<sup>306</sup> The act here ratified is act 1640, ch. 12. See Erskine, b. ii. tit. iii. § 37.

null and of nane avail. And the saids persons to be punished in their bodies, goods, and geare, with all rigour, conforme to the Lawes of this Realme.

AND to the effect of the saids unlawfull meetings with all others tumults, turbulances and playes that shall happen to fall out within the saids Burrowes, may be substantially suppressed, Ordeins the haill inhabitants of the saids Burrows, at all occasions to readily assist and concur with the Magistrats and Officers thereof, for settling of the saids tumults and turbulances, and punishing of the saids authors and movers thereof. And sik as shall not concur and assist with the saids Magistrates readily, or their Officers, for redding and setling of the saids tumults and turbulences, as said is, shall be repute and halden as fosterers and maintainers of the saids tumults, and punished therefore in their persons, and unlaved in their goods at the arbitrimet of the Magistrats and Councell of the said Burgh, and ordeins publication to be made hereof at the market-Crosses of the saids Burrows, that nane pretend ignorance thereof.<sup>207</sup>

### APUD EDINBURGH,

XVIII DIE MARTII, A.D. M,DC,VII.

#### 6. *Anent destroyers of Parks, Woods, Plantings, Dowcats, Bees, Lochs, and Stanks.*

OUR SOVERAIGNE LORD, and Estates of this present Parliament, considering how Woods, Parks, and all sorts of Planting and hayning decayes within this Realme; and how Dowcats are broken, Bees stollen, mens proper Lochs and Stanks herried, to the great hurt and prejudice of the Country and decay of Policy. Therefore, Ratifies and approves all acts of Parliament made of before, for conservation of planting and policy; and against breakers of Dowcats, stealing of Bees, and of fishes forth of mens Stanks and proper Lochs, in the haill poynts, articles and clauses thereof. And ordeins the samine to be put in execution against the contraveiners thereof. And farther, the Estates foresaid, statutes and ordeins, that whosoever shall be found hereafter to break down his neighbours woods and Park-dykes, Fenses, stanks or closures, to pastour within the saids fenses, cut trees, broome, or shear grasse within the samine, or yet breaks Dowcats, steals Bees and Fishes in proper stanks and lochs, shall be conveyed and called therefore as an breaker of the Law; either before the privy Councill, or any other ordinaire Magistrat within this Realme, at the option of the party compleiner; and the penalty to be imposed and taken of the contraveiners, before the saids ordinaire inferiour Judges, not to exceed the summe of fourty pounds money of this Realme. And the Secret Councell to impose sik penalties against the contraveiners of this present act, as after tryell taken in the cause, they shall finde the offence to merite and deserve. But prejudice alwyse of putting of all former Acts of Parliament made thereanent to execution, after the tenour thereof in all poynts; to the whilk this present act shall make na derogation.<sup>208</sup>

#### 13. *Act against unfreemen.*

OUR SOVERAIGNE LORD, And Estates of this present Parliament, Ratifies, approves and confirms all Acts, Lawes, Decreets and Priviledges granted or given in favours of his Heighness free Royal Burrowes. And considering the

<sup>207</sup> In reference to this act, see Hume, vol. i. p. 430, *et seq.*

<sup>208</sup> In reference to this act, see Hume, vol. i. p. 82.

great hurt and skaith, daily sustained by the Burgesses inhabitants of his Majesties Royall Burrows, wha underlyes and bears all burdings imposed upon the Estate of Burrows, in all his Majesties services, throw the continuall encresse of unfree Traffickers, dwelling in divers parts of this Realme, not being Burgesses of the saids Royall Burrowes. And neverthelesse, keeps and holds open buiths, buyes and sells Merchandice, and otherwise uses the liberties and priviledges of free Burgesses, as if they were Burgesses and actual residents within the saids Royall Burrowes, in manifest defraud of OUR SOVERAIGNE LORDS Customes, and to the prejudice of the liberties of the saids free Royall Burrows. And therefore, statutes and ordeins, that all unfree persons not being actual Burgesses of the saids free Royall Burrowes, wha beares not burding and pays not taxt and stent to his Majesty, shall desist and cease from using of any Trade or Merchandice, or of the Liberties and Priviledges foresaids of the saids free Royall Burrowes, under the pains contained in the Acts of Parliament, made anent unfree traffickers of before. And that letters of horning be direct hereupon charging whatsoever unfreemen, and usurpers of the Priviledge of the saids Burrowes, to find sufficient caution for obedience of this act. And als that letters of Horning be direct upon all Acts and Decrees of Burrowes, given at their conventions betwixt Burgh and Burgh, and Burgesses of free-burrowes, upon an simple charge of ten dayes without calling of the party.<sup>209</sup>

#### APUD EDINBURGH,

X DIE MAII, M,DC,VIII. CONTINUED TO XII DIE APRILIS, A.D. M,DC,IX.

##### 14. *Act anent the Commissioners and Iustice of Peace.*

FORSAMEIKLE As among the infinite monuments and testimonies of his Majesties true pietie, singular wisdom, sincere zeale to Justice and fatherlie care of his people, the Estaites of this Kingdome have not found any bringing mair deserved commendation and permanent renown to his Majestie, or greater profite, quyetnesse and comfort to his subjects, nor his constant perseverance in his maist Religious and prudent resolution to extirpat the ungodlie, Barbarous and brutall custome of deadlie feads, whilk by the inveterate abuse of many bypast ages was become sa frequent in this Realme, as the subjects of greatest ranke and qualitie upon every naughtie occasion of base and unworthie controversies of neighbourheed, for turves, fold-dykes, furies or marches of lands, foolish words or drunken discords betwene their meanest servants and dependers, and any other in the Countrie, did so readilie embrace the protection of their unjust and unnecessarie quarrels, as did many tymes involve themselves and their haill friendship in maist bloudie and mortall troubles, whilk they did prosecute with sic malice and crueltie, as to the extreame perrell of their saules, infamie of their memoriall, and overthrow of their owne and their adversaries houses, did distract the Kingdome in opposite factions, and many tymes furnished matter of maist pernicious, seditious and Civile warres. The inconveniences whereof being manifestlie sene and sensible felt, baith by the Princes and people of this Realme in many bypast ages and earnestlie sought to have been removed, yet the corruption was sa universall, that the greatest part prevailling against the best, that cruell Barbaritie hath both continuance and daily

<sup>209</sup> In reference to this act, see Watson's Statute Law, vol. i. p. 227, *et seq.*, and authorities there referred to.

increase, untill his Majestie bending the excellent wisdome and rare graces of his Royall minde (where with God hes endewed him mair aboundantie than any King that ever did raigne in this Iland) against that godles, unnaturall and beastlie Custome, did devise and establish a maist godlie, just and prudent Law and Ordinance for the course to be observed, for removing upon equitable and just conditions the deadlie feads, whilk then stude in great number betwene the maist powerfull subjects in this Kingdome and their kinsmen, assisters and partakers: In the execution whereof, God having miraculously assisted his Majesties maist halie and just intention after exceeding great care and paines tane by his Majestie in tryall of the originall causes of the saids discords, the true circumstances of the injuries and losses sustained by either partie, and in prescrying due satisfaction to be indifferently made for redres of all bypast harmes and wrangs. His Majesties admirable constancie hes sa overcome all difficulties, that the haill knowne feads within the Kingdome being now removed by perfite reconciliation, and just contentment of all parties having interest therein, his Majesties haill subjects finds sik joy and happines in the sweet frutes of his wisdome and providence expressed in that case; that they earnestlie wish that his Majestie wha hes sa cairfullie exterminate that abominable pest of deadlie feads, may in his singular wisdome finde meanes for ever to prevent the reviving of that monster. Wherein his Majestie considering that nothing gave sa great growth and strength to that bypast Barbaritie, as the slouth of Magistrats in not suppressing the first seeds of these dissensions, whilk being small and weake in the beginning, for Peets, Turves, Devits, Fold-dykes, poynding, neighbourlie marches, injurious words or light brawles were then easilie to be settled, if diligence and authoritie had bene joyned for repressing thereof, whilk being neglected by these to whom it appertained; these light jarres and insolences did very oft kindle sik flames of disorder, dissention, rankor and feed, as in many yeares with great streames of bloud, desolation and ruine of great and auncient houses and races, could hardlie be quenched. For remeid whereof his Majestie and Estaites foresaids, Ratifies and approves the former Act made by his Heighnes, for abolishing deadlie feedes in every head, clause and Article thereof. And farther, statutes and ordeines, that in every Schyre within this Kingdome there shall be yearlie appoynted by his Majestie some godlie, wyse and vertuous Gentlemen of good qualitie, moyen and report, making residence within the same, in sik number as the bounds of the Shyre shall requyre, to be Commissioners for keeping his Majesties peace, to whom his Majestie with advyce of the Lords of his privie Councell shall give power and commission to oversee, try and prevent all sik occasions as may breed trouble and violence amongst his Majesties subjects, or forceable contempt of his Majesties authoritie and breach of his peace. And to command all persons in whom they shall see manifest intention to make trouble or disorder, either by gathering together of idle and disorderlie persons, or by public bearing or wearing of Pistolets or other forbidden weapons, and sik other ryetous and swaggering behaviour; to binde themselves and finde caution under competent paines to observe his Majesties peace, and for their compearance before his Majesties Justice or Lords of his privie Councell, to underly sik order as shall be found convenient for punishing their transgressions or staying of troubles and enormities. And if need shall be, to requyre the dewtifull and obedient subjects of the Shyre to concurre with them in preventing all sik contempts and violences, or for taking or waarding of the wilful and disobedient authors, committers and fosterers of these crymes and disorders under sik competent arbitraire paines as his Majestie and Lords of his privie Councell shall appoynt for the offenders, and sik of the countrie as being requyred shall not give their readie and afald concurrence to his Majesties Commissioners in the premisses, whereby the ordinare Magistrats

and Officiars within the Shyres, may be the better assisted, and their absence, imployments or other impediments mair commodiously supplied, without derogation of their jurisdiction or want of readie comfort and Justice to the obedient subjects within the bounds thereof. Ordeining also the saids Commissioners to give true advertisement and information to the Lords of his Majesties privie Councell, Justice generall and his deputes, his Majesties Thesaurer and other Magistrats and officers whom it effeiris, of the names of sik faithfull and unsuspect witnesses and assysers to be summoned in all crymes and disorders whilk shall happen to fall forth within the saids Shyres, as shall be knawn to be maist meet and able for tryell and probation of the same, and for eschewing that sik as are either aged, seiklie or unable, to travell, or ignorant of the facts to be tryed, be not unjustlie vexed or unnecessarilie drawne from their awne houses and affaires, for matters wherein they are not able to give any light.<sup>210</sup>

## APUD EDINBURGH,

XII DIE OCTOBRIS, A.D. M.DC.XII.

3. *Ane Act declaring that in all tyme hereafter, the objecting of Horning for a Civile cause of the party ather slaine or mutilat, shall be no liberation of the offender from the punishment due of the Law.*

OUR SOVERAIGNE LORD, with advise and consent of the Estates of Parliament, Statutes that if any of his subjects be mutilat or slaine being at the horn only for Civile causes the Slayer being persued, or sick as are airt or part of the saids crymes of Slauchter or Mutilation, before the Justice generall his deputs or any other ordinar Judge: No alledgeance founden upon the party slain' or mutilat, their being at the horne for any civile cause shall ather stay process or be ane defence to delay processe or procure impunitie to any of the offenders guilty of the crymes foresaids. And this Act to have force, effect and execution, for all sick crymes above specified as shall be hereafter committed allanerly.

4. *Ane act against ravishers of Weemen.*

OUR SOVERAIGNE LORD, with advise and consent of the Estates of Parliament, Statutes and ordeins that if any being airt or part of Ravishing of Weemen, be persued for that heynous offence, and defend themselves be the subsequent consent of the woman Ravished, or be her declaration that she went with them of her awne free-will and consent (albeit in that case the womans declaration of her consent may exeime them from Capitall punishment.) That if the womans Parents or neirest kins folk, or his Majesties Advocat be able to verifie be determination of the assise, that the fact wes at first violentlie and forceably done against the parties will and without their consent. The subsequent consent or declaration of the party shall not exeime the offenders from his Majestys arbitrall punishment of warding their persons, confiscation of their goods, or imposing upon them pecunial penalties at his Majesties pleasure.<sup>211</sup>

<sup>210</sup> This is the act which originated the office and jurisdiction of Justice of the Peace in Scotland.

<sup>211</sup> In reference to this act, see Hume, vol. i. p. 306, and Alison's Principles, p. 219.

7. *Ane Act allowing Horning upon an simple charge of fyfeteene dayes to be direct upon Commissars decreits.*

OUR SOVERAIGNE LORD, be advyse of the three Estaites of Parliament, Ordeins and statutes, that the decreits and sentences of all Commissars within this Kingdome, receave siklyk execution be Horning as the decreits of Schireffs, Admiralls, Stuards, and Baillies of bourgh: And that the Lords of Session upon the sight of the Acts and decreits of the said Commissars, or their precepts lawfullie execute be their officiars, beand the partie to have beine charged upon fyfetein dayes: Direct letters of Horning upon the simple charge of fyfetein dayes as in the cases aforesaid, and conforme to the Act of Parliament made in their favours.<sup>212</sup>

8. *Ane Act anent repairing of Bishops Manses.*

OUR SOVERAIGNE LORD, with advyse of the three Estaites, Ordeins all Arch-bishops, Bishops, and uthers Ecclesiastical persons, to build, repaire and mainteine their houses and manses in sik case as may serve for their dwelling and the dwelling of their Successors, and if they or any of them suffer the saids houses or manses to ruine and decay in their default, The Successor shall have action against their executors for the same: As als where the saids houses are fallen in decay, and shall be built and repaired be any of the beneficed persons upon their awne expenses, the next Successor shall be obleished to give satisfaction therefore to the Heires or Executors of the defunct at the sight of two or three of the Bishops within the Province. Provyding that the said satisfaction excoide not the soume of *ane Thousand pounds*, if they be Prelats, and *fyve hundreth markes*, if they be uther inferiour Ministers.<sup>213</sup>

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APUD EDINBURGH,

XXVII DIE MAII, A.D. MDCXVII.

3. *Anent the Plantation of Kirks.*

OUR SOVERAIGNE LORD, Considering that there be divers Kirks within this Kingdome not planted with Ministers, where through ignorance and Atheisme abounds amongst the People; and that many of those that are planted, have no sufficient provision or maintenance appointed to them, whereby the Ministry are kepted in poverty and contempt, and cannot fruitfully travel in their charges. Considering also that nothing is more properly belonging to his Princely care, than to the good estait of the Kirks within his Dominions, out of that zeale which his Majesty beares to the promoting of the Kingdome of CHRIST.

AND for ane perfit remedie of those evils, with advice and consent of the Estates of Parliament, hes granted full power and commission to the Lord Chancellor for the time, and to the reverend Fathers in GOD *John* Arch-bishop of *Sanct Andrews*, *James* Arch-bishop of *Glasgow*, *Alexander* Bishop of *Dunkeld*, *Alexander* Bishop of *Aberdeen*, *Alexander* Bishop of *Murray*, *Patrick* Bishop of *Ross*, *Adam* Bishop of *Dumblane*, and *William* Bishop of *Galloway*: Eight per-

<sup>212</sup> This act is in force so far as it regards Sheriffs acting as Commissaries. See Juridical Styles, vol. iii. p. 985.

<sup>213</sup> In reference to this act, see Erskine, b. ii. tit. x. § 58.

sons nominat for the Clergy and Prelates, And in-case of the decease of any of them, To *Andro* Bishop of *Brechin*, *George* Bishop of *Orkney*, *Andro* Bishop of *Argyle*, and *John* Bishop of *Caithness*: Which four persons, his Majesty and Estates hes nominate to supply and become in the place of any of the other eight foresaid, if any shall happen to decease before this Commission be finished. To wit, the first of the four in the place of the first of the eight deceasing, & so in order successively as they are named. And to *John* Earl of *Marr* Lord Treasurer, *James* Marques of *Hamilton*, *James* Earl of *Abercorne*, *William* Earl of *Tullibardin*, *Robert* Earl of *Roxburgh*, *John* Viscount of *Lawderdale*, *Thomas* Lord of *Binning*, and *David* Lord of *Carnegie*, eight persons nominat for the Nobility. And in case of any of their deceases, To *Alexander* Lord *Elphinstoun*, nominate to become in the place of the first deceasing. *Alexander* Earle of *Eglinton* in the second, *John* Earl of *Perth* in the third, & *John* Lord of *Balmirrenock* in the fourth. And to the Commissioners under-written nominat for the Barons: To wit, *William* Douglas of *Drumlangrig*, Sir *Walter* Dundas of that ilk, Sir *James* Halliburton of *Pitcur*, Sir *John* Hamilton of *Lettrick*, Sir *John* Vaus of *Barnbarroch*, Sir *Andro* Murey of *Balvaird*, Sir *Alexander* Gordon of *Cluny*, and to Sir *George* Auchinlek of *Balmano*. And in case of any of their deceases, to *Thomas* Urquard Sheriff of *Cromarty*, Sir *Alexander* Strachan of *Thorn-toun*, *Josias* Steward of *Boniton*, & Sir *Robert* Steward of *Schillinglaw*, persons nominate to become in order as they are named in places of any of the eight deceasing. And to *James* Arnot, Burgesse of *Edinburgh*, Master *Alexander* Wedderburne Clerk of *Dondie*, Sir *Thomas* Menzies Provost of *Aberdeine*, *John* Scherar Burgesse of *Sterling*, *Andro* Milne Burgesse of *Linlithgow*, *John* Osburne Burgesse of *Air*, *John* Matheson Clerk of *Carel*, and Sir *George* Bruce of *Carnock* Knight, Burgesse of *Culross*, eight persons nominate for the Burrowes. And in case of any of their deceases, to *Alexander* Clerk, Merchant Burgesse of *Edinburgh*, Master *William* Ferguson Burgesse of *Dundie*, *George* Nicolson Burgesse of *Aberdein*, & *John* Williamson Clerk of *Sterling*: Persons nominate to supply in order any of the other eight Commissioners foressaids deceasing. Which foressaids Commissioners, or any five of ilk Estate nominate, as said is, consenting & agreeing in ane voice, shall have power to convey, consult, and to determine upon the maters, and in manner underwritten. Providing alwayes, that there is and shall be necessarily requisite to the validitie of any Act, conclusion, ordinance and determination of the saids Commissioners, the conjunct assent of five of every ane of the saids foure Estates, all agreeing together in ane voice, without the which consent of the saids five of ilk Estate so agreeing, the rest of the saids Commissioners shall have no power to make any valide or effectual conclusion by vertue of this present Commission, but whatsoever shall be otherwayes done, is declared to be of na availe, force nor effect. That is to say,

OUR SOVERAIGNE LORD & Estates of Parliament by the tenour hereof, gives, grants, & committs full power & authoritie to the saids Commissioners to meet and convene in the Town of *Edinburgh*, at sik time and times as they shall appoint and finde convenient, and there to call & summond before them, all Patrons, Tacksmen of teinds great and small, and all others having right by whatsoever title to the Teinds within this Kingdome, as they shall think necessar and expedient to exhibite and produce before them their rights and titles, whereby they claime the saids teinds to be seene and considered be the saids Commissioners. With power to them out of the saids teinds of every Parochin, to appoint and assigne at their discretions ane perpetual local stipend to the Ministers present and to come at all Kirks that shall be found by them either as yet not provided at all, with Ministers & stipends, or where the provision is lesse nor *five hundreth marks*

of yearlie rent in money, or *five Chalders victual* (by manse and gleibe) or sik proportion particularly of silver and victual, as will effeir and extend to *five hundredth Marks* or *five Chalders victual* yearly, and which is the least & the meanest stipend & provision determinate, appointed, and declared by his Majesty and Estates, to be given and assigned to any Minister for his locall stipend in time coming, where the fruits of the Benefice will extend to that quantitie in maner under-written, & that notwithstanding of any right or title pretended by the said Tacks-men, or others in whose favours Teinds have been erected, With special power also to the saids Commissioners, to unite sik Kirks, ane or moe as may conveniently be unite. Where the fruits of any one alone will not suffice to entertaine ane Minister. In the which case of union of sik Kirks, if it fall out that necessitie offer to unite Kirks belonging to the presentation of divers Patrons, the presentation of the Ministers shall be appointed by the saids Commissioners to pertain to the Patrons (*alternis vicibus*) to the which Commissioners his Majestie and the Estates does recommend and refer to consider and appoint farther sik solide order as may be best taken, and stand with the least prejudice of any or the Patrons, and as they shall be found to have more or lesse intrest in the Kirks to be so united. It is alwayes provided, that whereas there are divers Kirks whereof the fruits of any one will not extend to the quantity of *five Chalders victual*, nor *five hundredth marks* of silver in yearly commoditie, and that the rents and whole patrimonie thereof are nowayes answerable to that proportion, and so is not sufficient the alone for the full maintenance of ane Minister, and yet neverthesse for distance of place, or other lawful causes may be found incommodious to be united, whereby necessity will evince, that every Kirk in that estate, should be planted with their own particular Minister to serve thereat, whose provision behooves necessarily to consist of the fruits of the Benefice itself, how mean soever the same be.

THEREFORE IT IS Declared that it shall be sufficient to the saids Commissioners in that case to assigne and appoint to the Minister to be planted at any sik Kirks the whole fruits pertaining to the Patrimony thereof, by and attour his manse and gleibe. Which fruits are to be enjoyed by him & his successours thereafter, as their perpetual Local stipend and provision. And to the end the said Commission may take the better effect, and for ane solide order anent the provision of the saids Kirks, with their certaine definite stipend, and that it may be clearly known what shall be the proportion and quantitie of any stipend, which shall be hereafter appointed to every Minister, at any Kirk, either not provided at all, or not sufficiently provided, as said is.

OUR Sovereigne LORD and Estates Declares, that the least and meanest stipend which they have appointed to be hereafter provided by the saids Commissioners to any Minister shall not be under and within the quantitie of *five chalders victuall*, or *five hundredth marks* of money, or porportionally part of victual, and part thereof in money, according as the fruits and rents of the Kirk may yeeld and afford, and as the saids Commissioners shall think expedient, effeirand to the saids *five chalders victual*, or *five hundredth marks* money, by and attour their manse and gleibe, where the whole fruits of the Kirk will extend to the quantitie foresaid, and that the greatest and most stipend which the saids Commissioners shall have power to assigne for stipend to any Minister at any of the saids Kirks, aither not planted or planted, and provided with stipends within and under the said *five Chalders victuall*, or *five hundredth marks* of money, as said is, shall not exceed the quantitie of *Ten Chalders victual*, or *ane Thousand marks* of money, and proportionally part of money, and part of victuall, at the consideration of the saids Commissioners, as they shall find by examination of the rents of the Kirk



most conveniently may be payed by and attour their manse and gleibe. Swa the greatest shall be *ane Thousand marks*, or *Ten Chalders victuall* with manse and gleibe, and the least *five hundreth Marks*, or *five chalders* of victual, with manse and gleibe, except where the whole fruits of the Kirks will not extend to that quantitie, as said is. And finds and declares, that all Kirks which are planted with Ministers, whose stipends extends to *five chalders victual*, or *five hundreth marks* of silver, or part of both, effeirand to the whole by their manse and gleib, (the same being made sure to them) are expresly excepted out of this Commission, and no wayes comes under the compasse thereof, neither shall the saids Commissioners have any power by vertue hereof to meddle with any Kirks or stipends which are in that case, seeing the said Commission is not extended to the same. IT IS also provided, that where any Kirks are already sufficiently provided, albeit their provision does exceed the foresaid quantity of *ten chalders victuall*, or *ane thousand marks* of money, And als where the fruits of any Benefice are in the possession of the Minister, that the same shall be continued in the estate wherein it is at the present, and not to be meddled with by vertue of the said Commission. And because reason and equity craves, that recompence should be made unto the Tacks-men and others persons whatsoever, who shall be by the sentence of the saids Commissioners hurt and prejudged of their present profit, which they may lawfully bruik by vertue of their titles and rights, established in their persons, and upon whom by vertue of the said sentence, any burden of the sustentation and provision of the saids Kirks and Ministers is to be imposed.

Therefore OUR said Sovereigne LORD and Estates of Parliament gives full power and commission to the saids Commissioners, so to proceed in the determining of the saids recompences, That incase the Lord or any other having right to erected Prelacies, who shall be cited before them, refuse to take the burden of plantation of any Kirks belonging to the saids erected Prelacies, which are not planted, or to help sik other Kirks of the same, as are not well and sufficiently provided, according to the tennour of the foresaid Commission, and that upon their refusall (the said refusal being first found reasonable by the saids Commissioners) the burden of the said plantation, or farther provision, shall be laid and imposed by the saids Commissioners, in whole or in part, either upon the principal Taksmen of any of the fruits of the saids Kirks. Or incase if the Taksmen refuse, the burden be imposed upon the Sub-taksmen thereof, the saids Commissioners shall have power to decerne, appoynt, and ordeine sik particular recompence to be given to the saids Taksmen, or Sub-taksmen, by renewing of their tacks or sub-tacks, after the expiring thereof, upon sik conditions as the saids Commissioners shall finde reasonable, respect being had to the quality and proportion of the burden to be imposed upon them within the time of their Tacks and rights, farther then they are astricted by their saids rights, or by appointing sik other reasonable satisfaction as they shall finde the said burdén and distresse undergone by any of them, shall deserve and require.

Lykeas the saids Commissioners shall have siklyke power to determine, decerne and appoint sik particular satisfaction and recompence to be given either to laick patrons, or to the Taksmen of the fruites of the Kirks belonging to the like Patronages and Sub-taksmen thereof, as they shall think may be answerable to the burdens to be imposed upon either of them for the cause above-written proportionally. In the prescryving of the which recompence, the saids Commissioners shall have special respect, what consideration they finde reasonable to be given to the saids Patrons for their consents to the Tacks, if any shall be appoynted and decerned to be set and given to the saids taksmen for recompence foresaid. And if any beneficed person upon just, and reasonable causes, refuses to provyde any

Kirk belonging to their Benefice, according to the order hereby prescryved, whereby the burden of plantation, or farther provision of the Kirk, must necessarily lye upon the Tacksmen or Sub-tacksmen of the fruits thereof. The saids Commissioners in that case also shall decerne sik recompence to be given to the saids Tacksmen and Sub-tacksmen for their losse and prejudice sustained as the saids Commissioners shall find the same shall merit, by renewing of Tacks to them upon sik conditions as may requite their losse, or by finding out some other reasonable meane which may repair the same. And OUR said Sovereigne LORD, with advice and consent of the saids Estates, Declares, Statutes and Ordeins, That all tacks which shall be decerned by the saids Commissioners to be given in recompence to any person whatsoever for the causes above-written, and which shall be set for obedience, and conforme to the said decreet and sentence; whatsoever yeares, or long space the saids tacks shall comprehend, shall be good, lawfull, and sufficient securities to the persons in whose favours the same are appoynted to be given and conceived, neither shall the same be any ways prejudged by the Act made in this present Parliament, by the which it is statute that no Arch-bishop, Bishop, or Prelate should set in tack any part of their patrimony for longer space nor nineteen yeares, and that no inferiour Beneficed person shall set in tack any part of their Benefice for longer space nor their awne life-times, and five yeares thereafter, as the said Statute proports, fra the which Statute, the saids tacks so appoynted to be set and given in recompence, are and shall be excepted and reserved, and shall no wayes come under the compass of the said Act and Statute, nor any thing therein contained, but the same shall remain and abide valide and sufficient rights for the whole space and yeares appoynted therein according to the tenour thereof notwithstanding of the said Act and Statute.

AND because it may fall furth that in the recompence to be appoynted by the Commissioners to the Patrons, Tacksmen, & Sub-tacksmen for the foresaid burden to be imposed upon them, moe yeares may be assigned for prorogation of their present tacks nor may lawfully or conveniently be set be the present beneficed persons to whom be Law the setting of tacks of Teinds belongs. FOR remeid thereof, OUR Sovereigne LORD with advise and consent of the Estates Declares, Statutes and Ordeins, That it shall be lawfull to the Commissioners foresaids to appoynt als many yeares after the expyryng of the present tacks to the tacksmen of the saids Kirks and Teinds or to the Patrons or sub-tacksmen *respective*, for bruiking of the saids teinds for recompence of the said burding as they shall think reasonable, which shall be als good, valid and sufficient rights to the saids Patrons tacksmen and sub-tacksmen *respective*, and to their heirs and assignayes, for bruiking and possessing and disponing upon the saids teinds during the saids years of prorogation, as if good, lawful and valide tacks and rights of the saids teinds had been set and made to them be the Titulars of the benefices to whom the same belonged, with consent of all parties having entresse. With express provision and declaration that at the expyryng of all the saids years, the right of the saids teinds and power to set tacks thereof, shall returne and appertein to the saids Titulars of the foresaids Benefices, as they did before the making of this present Act.

And OUR said Sovereigne LORD, with advice of the saids Estates, Declares and ordeins this Commission to last and endure to the feast and terme of Lambes, in the year of God one thousand six hundreth and eighteen years, After the which time the same shall cease and expire. And Ordeins the decreet and sentence of the saids Commissioners in all the particulars foresaids, and every ane of them, to have the strength, force and authority of an decreet sentence, and Act of Parliament. For obedience whereof the Lords of Session shall direct and grant Letters

in forme as effeirs, and according as shall be necessar. Which Commission above-written, taking force and full effect in all the saids particulars therein conteined, as the same are set down and comprehended therein, by pronounciation of decreet and sentence upon the same, conforme to the power therein comprehended, given to the saids Commissioners.

OUR SOVERAIGNE LORD with the express consent and assent of the Estates in that case, Findes and declares, that no person in whose favours the teinds of Kirks and Benefices are erected, nor no other whatsoever bruiking teinds, by vertue of Rights lawfully made to them of the same, according to the Laws of this Realme then standing, shall be ever farther altered or quarrelled in any of their saids Rights, in any time to come, farther then shall be appoynted by the said decreet and sentence to follow upon this present Commission; but the saids rights and securities in case foresaid, shall remain in the awne strength, force and effect, as good, lawful and sufficient rights and securities to them and every one of them for their awne parts, for bruiking and enjoying the saids teinds, conforme to the tennour of the saids rights, for now and ever.<sup>214</sup>

6. *Anent furnishing of necessaries for ministration of the Sacraments.*

OUR SOVERAIGN LORD with advise & consent of the Estates of Parliament, Ordeins that all the Paroch Kirks within this Kingdom be provided with Basins and Lavoirs for the ministration of the Sacrament of Baptisme; and of Cups, Tables, and Table-Cloathes, for the ministration of the holy Communion; which shall be received to that use by the Minister of the Parochin, in sick convenient place as he shall finde meet, for which he and his heirs and executors shall be answerable to the Parochin, incase the same be lost, or otherwise used to any profane use. And ordeins the expences thereof, to be made by the Parochiners, and the Ministers of every Kirk to doe their diligence for provyding the same, by causing the Parochiners stent and taxe themselves to the effect foresaid, betwixt and the first of *Februar* next, under the pain of losing one years stipend. And for putting the said Act in execution, Ordeins the Lords of his Majesties Council and Session, to give forth their Letters for charging the Parochiners to convene and taxe themselves to the said effect, and make payment of the money wherein they shall be stented, as the same shall be required.<sup>215</sup>

10. *Anent the Poor.*

FORASMUCH As there hath been divers worthy Laws and Statutes made by His Majesty, and his Highness Predecessors, for restraining of idle and masterful Beggars: and that notwithstanding thereof, the number of the saids Beggers hath daily increased, more and more; and his Majesty, and Estates, considering, that the cause of the multiplying of the saids Beggers, hath, and doth, proceed from

<sup>214</sup> This is the first of a series of commissions, which were issued from time to time, down to the institution of the present Teind-Court in 1707. As the powers possessed by those several commissions were transferred generally to the Teind-Court by 1707, ch. 10, it is necessary to insert these commissions in the present publication, to afford the means of ascertaining how far the powers contained in the later commissions modify or extend the instructions contained in the previous ones. They are as follows:—1621, ch. 5; 1633, ch. 19; 1661, ch. 67; 1663, ch. 34; 1672, ch. 39; 1685, ch. 35; 1686, ch. 34; 1690, ch. 63, and 1693, ch. 39.

For a commentary on the present commission, and the alterations produced by it on the state of the tithes, see Connell on Tithes, vol. i. p. 3, *et seq.*

<sup>215</sup> In reference to this act, see Dunlop on Parochial Law, p. 451, *et seq.*

this ground, That no order hath been taken in by-gone time, with the poor Children and Orphans, born of poor indigent Parents, who being tollerated or neglected, at their first entry to begging, doth contract such a Custome and habite, that hardly they can be drawn thereafter to any other calling: whereas if the saids Children were in their tender years put to work, and imployed, and trained up in any commendable labour, they might thereafter not onely relieve the country of their charges, but also prove profitable to the Common-wealth: which might be easily performed, if the saids poor Children were taken off the hands of their Parents, by some of his Majesties well-affected subjects in particular, or by any of the incorporations and Burghs within this his Majesties Kingdom in common, and imployed in some calling or vocation, that might tend to the good of the Realme: THEREFORE, His Majesty with advice and consent of the Estates, doth in most earnest manner, recommend to all his Heighness loving Subjects, requesting them, as they tender the good and honour of the Realme, to receive within their houses and family, and to take upon their care, intertainment, and education, some of the saids poor and indigent children, one or moe, every person according to his power and faculty: LIKEAS his Majesty with advice foresaid, for the further security of his Heighness Subjects, finds and declares, that it shall be lawful to his Heighness Subjects, to take the saids poor children in their power, houses, and family, to be educate, and brought up by them, either in their houses, or to be put by them to such Crafts, callings, and vocations, either within the Country or without the same, as they please: which children so received, shall be oblieged and bound, as servants, to the receivers, in manner, and during the time after specified: IT is alwayes declared, that the condition of the saids children, which shall be so received by his Majesties Lieges, and the manner of their delivery to them, shall be as followeth: That is to say, THAT they be such who shall be found and tryed to be poor and indigent, and to have no meanes for their entertainment, and that by the declaration of the Provost and Baillies, and by the Session of the Kirk, within Burgh, or by either of them: and the Sessions of the Kirks in Landward, where the saids poor children remaines, or are found to be for the time: and if the saids poor children be with in the age of fourteen yeares, they shall be delivered to his Heighnes Subjects, by the Magistrates within Burgh: or by the Session of the Kirk and Parochin where they remaine, with consent of their parents, if they have any known within the Parochin for the time: otherwise they shall be delivered by the saids Magistrates and Session of the Kirk alone, or either of them, as said is. And if they be past the age of fourteen yeares, that their own consent shall be taken thereto, by the advice of the saids Magistrates and Session of Kirk, or either of them, as said is, who at the delivery of the saids poor children, to his Heighness Subjects, shall give a testimoniall, under their, or their Clerks hand writs, of the Estate, quality, and condition foresaid, of the said poor children, and of their delivery to their Masters: Which testimoniall of the saids Provosts, Baillies, and Session of the Kirks, bearing the said tryall and delivery, his Heighness with advice and consent of the Estates foresaids, findes and declares, shall be a sufficient warrand to the receivers, for brooking the benefit of this present statu'e: And to the effect his Heighnesse Subjects may be moved hereto, by the expectation of the commodity and advantage which they may reap by the labours and service of the saids poor children: His Majesty with advice of the saids Estates, statutes and ordeins that the saids poor children, received by any of his Highnes Subjects, upon the testimoniall of Provost, Baillies, or Session of Kirks, in manner above-

specified, shall be bound and astricted to their saids Masters, their heirs and assignayes, in all kind of service which shall be enjoyned to them, until they pass the age of thirty yeares compleat, and that they shall be under discipline to their saids Masters, and their foresaids, and subject to the corrections and chastisements, according to the merits of their offences, in all manner and sort of punishment, the life and torture excepted. Likeas it is declared, that whatsoever the saids servants gaines, or wins by their travels during the said space, shall appertain properly to the saids Masters and their foresaids: And if it shall happen the saids servants to absent themselves from their saids Masters service, without their licence, then and in that case they shall be obliged to refund to their saids Masters the whole damage and intresse sustained by them, through their absence upon the declaration of the saids Masters, without any further probation, by and attour the bodily punishment to be laid upon them at their returning, by the discretion of their saids Masters: And if it shall happen them to be received by any other persons, the saids receipters shall be obliged to restore them again to their said Masters, within twelve houres after they be required to that effect, personally, or at their dwelling places, in presence of a Notar, and two witnesses, and if they failie, they shall pay after every requisition, *ten shillings* daily, ay and whill they be restored, and that without prejudice to the saids Masters, to call and pursue for delivery of their saids servants, before the ordinary Judge, as accords of the law, and for the damage and skaith sustained by them, through the want of their saids servants, during the space of their absence, after the said requisition.<sup>216</sup>

#### 12. *Anent prescription of heritable Rights.*

OUR SOVERAIGNE LORD considering the great prejudice which his Majesties Lieges sustaines in their Lands and Heritages, not only by the abstracting, corrupting and concealing of their true evidents, in their minority and lease age, and by the amission thereof, by the injury of time, through War, Plague, Fire, or such like occasions: but also by the counterfeiting and forging of false evidents and writs, and concealing of the same to such a time, that all meanes of improving thereof is taken away: whereby his Majesties Lieges are constitute in a great uncertainty of their heritable Rights, and divers pleas and actions are moved against them, after the expiring of thirty or fourty years: which neverthesse by the civil Law, and by the Lawes of all Nations, are declared void and uneffectual: And his Majestie according to his fatherly care, which his Majesty hath, to ease and remove the griefs of his Subjects, being willing to cut off all occasion of pleas, and to put them in certainty of their heritage, in all time comming: Therefore his Majesty with advice and consent of the Estates of Parliament, by the tennour of this present Act, statutis, findes, and declares, That whosoever his Majesties Leiges, their Predecessors and authors have brooked heretofore, or shall happen to brook in time comming, by themselves, their tennents, and others having their Rights, their Lands, Barronies, Annuelrents, and other Heritages, by vertue of their heritable infestments, made to them by his Majestie, or others their superiours and authors, for the space of fourty yeares, continually and together, following and insuing the date of their saids infestments, and that peaceably, without any lawful interruption made to them therein, during the said space of fourty yeares, that such persons, their Heirs and Successours shall never be troubled, persued, nor in-

<sup>216</sup> In reference to this act, see Dunlop on Parochial Law, p. 323.

quieted, in the heritable right and property of their saids lands and heritages foresaids, by his Majesty, or others, their superiours and authors, their Heirs and Successours, nor by any other person, pretending right to the same, By vertue of Prior infeftments, publicke or private, nor upon no other ground, reason or argument, competent of Law, except for falsehood: Providing they be able to shew and produce a Charter of the saids lands, and others foresaids, granted to them, or their Predecessours, by their saids superiours and authors, preceeding the entry of the saids forty yeares possession, with the instrument of seasing following thereupon: or where there is no Charter extant, that they shew and produce instruments of Seasing, one, or moe, continued, and standing together for the said space of forty yeares, either proceeding upon retours, or upon precepts of *clare constat*. Which rights his Majesty, with advice and consent of the Estates foresaids, findes, and declares, to be good, valide, and sufficient rights, (being claid with the said peaceable, and continual possession of forty yeares) without any lawful interruption, as said is: for brooking of the heritable Right of the same lands, and others foresaid. And sikklike his Majesty with advice foresaid, statutes and ordaines, that all actions competent of the law, upon heritable Bands, Reversions, Contracts, or others whatsoever, either already made, or to be made after the date hereof, shall be pursued, within the space of forty years, after the date of the same: except the saids Reversions be incorporate within the body of the infeftments, used and produced by the possessour of the saids lands, for his title of the same, or registrated in the Clerk of Register his Book: in the which case seeing all suspition of falsehood ceases most justly, the actions upon the saids Reversions, ingrossed and Registrated, ought to be perpetual: excepting always from this present Act, all actions of warrandize, which shall not prescribe, from the date of the Band, or Infeftment, whereupon the warrandize is sought: but only from the date of the distresse, which shall prescribe, it not being pursued within forty years, as said is. And sikklike it is declared, that in the course of the saids forty years prescription, the years of minority, and lesse age, shall no wayes be counted, but only the years during the which the parties against whom the prescription is used and objected were majors, and past xxj. yeares of age. And his Majesty, being careful, that no person, who hath any just claime, bee prejudged of their actions, by the prescription of forty yeares, already run and expired, before the date of this present Act: Hath with advise foresaid, granted full liberty and power to them, to intent their saids actions, within the space of thirteen years, next following the date hereof, which shall be als effectual, as if the same had been intended within the said space of forty years, prescribed by this present Act. After the expiry of the which thirteen yeares, this present Act shall have full force and effect, after the tennour thereof in all points. And neverthelesse it is declared, that the persons, at whose instance the foresaids actions shall be moved, and intended within the said space of thirteen yeares, shall not be compelled to insist in the saids actions, at the desire of their parties, upon the first summonds and citation thereof only, except that the saids first summonds be called and continued, and the defenders of new summond thereby: in the which case, and no otherwayes, it is declared, that they may be compelled to insist at the instance of the party, having entresse.<sup>217</sup>

<sup>217</sup> For a commentary on this important statute, see Stair, b. ii. tit. xii. § 15, *et seq.*, and Ersk. b. iii. tit. vii. § 2, *et seq.*

13. *Anent reduction of Retours, and summons of Errour.*

FORasmuch as by Act of Parliament, made by his Majesties most Noble Progenitour, King JAMES the fourth, of worthy memory, upon the 13. day of *June* 1494, it was statute and ordained, that all summons of Errour, or inordinate processe, be pursued within the space of three yeares, after the determination of the inqueist, or service: the party being of lawful age, and within the Realme, otherwise to prescribe, as in the said Act and Statute at more length is contained. And because the true meaning and intention of the said Act, was, That OUR Sovereigne LORDS Lieges, being upon the said inqueist and service, should not lye under the paine and danger of Errour, after the space of three yeares, and no wayes to hurt or prejudice the righteous heire, and nearest of kin, who by the Law of God and man, was to succeed in the right of blood and succession to their Predecessours, and to their lands and heritages, *Jure sanguinis*. Therefore OUR said Sovereigne Lord, with advice and consent of the Estates foresaids, Statutes and Ordains, That the said Act of Parliament shall no wayes hurt nor prejudice the nearest of kin to seek reduction of the saids Retours, and service, to be past and exped in time comming, and that within the space of twenty yeares, immediately following the date of the saids Retours and services: and if the saids summons of Reduction, be not intented, executed, and persued, before the expiring of the saids twenty yeares, that the said action of Reduction of the said Retour and service, shall prescribe in the selfe, and no party to be heard thereafter to pursue the same Reduction: And als declares, that hereafter it shall no wayes be lawful to pursue the persons of inqueist for wilful Errour, except they be pursued therefore within the space of three yeares next after the date of the said Retour and service: It is always declared, that these presents shall no wayes be prejudicial to whatsoever persons, wha have acquired Rights of lands and heritages before the date hereof, *Bona fide*, from persons already retoured thereto in any time by-gone: but the saids persons, who have *Bona fide*, acquired, to brook their Rights, according to the law their standing.<sup>218</sup>

14. *Anent Executors.*

OUR SOVERAIGNE LORD understanding that a great number of ignorant people, the time of their sicknesse and disease, or otherwise at the making of their Testaments and latter wills, do nominate certain strangers to be their Executors, meaning only to commit the care of their goods, and diligent in-getting thereof, to the saids strangers, and that to the behoof of their children, or other persons who are nearest of kin: Whereas by the contrary, the said Office of Executry, by the interpretation now observed, doth carry with it the whole profit and commoditie of the defuncts part of the goods contained in Testament: which his Majesty findes to be altogether against law, conscience and equity: Therefore his Majesty, with advice and consent of the Estates of Parliament, findes and declares, that all Executours, already nominate in any Testament, not as yet confirmed, or to be nominate in any Testament to be made hereafter, are, and shall be obliged, to make count, reckning, and payment of the whole goods and geare appertaining to the defunct, and intronnetted with by them, to the wife, children and nearest of kin, according to the division observed by the Laws of this Realm: re-

<sup>218</sup> In reference to this act, see Erskine, b. iii. tit. vii. § 19. The act here referred to is 1496, ch. 6. of Mr Thomson's edition of the Scots acts.

serving onely to the saids Executors the thrid of the defuncts part, all debts being first payed and deduced, without prejudice alwayes to the saids Executors of whatsoever legacies left to them by the saids defuncts: which shall no wayes be prejudged by this present Act: but the saids Executors shall have full right to their saids Legacies, albeit the same exceed the said third of the defuncts part: & in case the saids Legacies exceed the whole thrid part, the saids Executors shall have right to the whole Legacie, & no part of the third: WITH this expresse declaration, That where Legacies are left to the Executors, they shall not fall both the saids Legacies and a third by this present Act, but the saids Legacies shall be imputed and allowed to them in part payment of their third.<sup>219</sup>

#### 15. *Anent the Escheat of Life-rent Tacks.*

OUR SOVERAIGNE LORD having considered that there hath been divers questions moved before the Lords of his Majesties Councel and Session, touching the Escheat of Life-rent-tacks of lands and teinds, fallen by the rebellion of the persons to whom the same appertained: and that it hath not been clearly decided, whether a Liferent tack should fall under the gift of a simple Escheat, or not: For the better clearing whereof in all time coming, OUR SOVERAIGNE LORD with advice of the Estates of this present Parliament, declares, statutes, and ordains, that Life-rent tacks of lands, or teinds, shall not fall under a simple gift of escheat, but under the gift of a Life-rent escheat only: And further, In case any tack, set of lands, or teinds, contain moe Life-rents nor one, and that the person to whom the said tack appertaineth in life-rent, be Rebel attour the space of year and day, where-through he loses his life-rent of the said tack. IT is hereby declared, that the remanent Life-renters contained in the said tack, nor the heires or assignayes of the Rebel, who have right to the said tack, after the said Rebels decease, shall not be prejudged by the said Life-renters Rebellion; so that after his decease, the said person having right to the saids tacks, shall brook and enjoy the same, notwithstanding the saids Life-renter rebellion, attour the space of year and day: which rebellion shall prejudice himselfe only, and no other person succeeding to him in the right of the said tack.<sup>220</sup>

#### 16. *Anent the registration of Reversions, Seasings, and others Writs.*

OUR SOVERAIGNE LORD, considering the great hurt sustained by his Majesties Lieges, by the fraudulent dealing of parties, who having annallied their lands, and received great summes of money therefore, Yet by their injust concealing of some privat Right formerly made by them, render the subsequent alienation done for great sums of money, altogether unprofitable: which cannot be avoided, unlesse the saids private Rights be made publick and patent to his Highnes Lieges: For remedy thereof, and of many inconveniences which may ensue thereupon; HIS MAJESTY with advice and consent of the Estates of Parliament, statutis and ordeins, That there shall be ane publick Register, in the which all Reversions, Regresses, Bands, and writs for making of Reversions or Regresses, assignations thereto, discharges of the same, Renunciations of Wadsets, and grants of Redemption, and siklike all instruments of Seasing shall be Registrat within

<sup>219</sup> In reference to this act, see Erskine, b. iii. tit. ix. § 26, and Nasmyth, 17th February 1819, F. C.

<sup>220</sup> This act is still applicable in cases of escheat arising from denunciations for criminal causes. See Erskine, b. ii. tit. v. § 61.



three scoredayes after the date of the same. IT is alwayes declared, that it shall not be necessar to Registrat any Bands and Writs for making of Reversions, or Regresse, unless the Seasing passe in favours of the parties makers of the saids Bands or Writs: in the which case it is ordained, that the same shall be Registrat within threescore dayes after the date of the Seasing. The extract of the which Register shall make faith in all cases, except where the Writs so Registered, are offered to be improven. And if it shall happen any of the saids Writs, which are appointed to be Registered, as said is, not to be duely Registered within the said space of threescore dayes: then, and in that case, his Majesty, with advice and consent foresaid, decernes the same to make no faith in Judgement by way of action or exception in prejudice of a third party, who hath acquired a perfect and lawful Right to the saids Lands and Heritages: But prejudice alwayes to them to use the saids Writs against the partie maker thereof, his heires and successours. IT is alwayes declared, that this present Act shall no wayes be extended to instruments of Seasing, and Reversions therein contained, given by Provost and Baillies of free Burghs Royal, of lands lying within their Liberties and Freedomes, halden by the saids Burghs in free Bourgage of his Majesty, nor to na other heritable Writs thereof, nor yet to Reversions incorporate in the Body of the Infefments, maid to the persons against whom the saids Reversions are used. IT is also declared, that if any Renunciations or Grants of Redemption, which shall happen to be consigned in processe betwixt parties, shall be Registrat within threescore dayes after the dates of the decreets wherby the same shall be ordeined to be given up to the parties having right thereto, the same shall be sufficient. And to the effect the said Register may presently and in all time comming be the more faithfully kept: Therefore OUR said SOVERAIGNE LORD, with advice and consent foresaid, statutes and ordeins the same Registers, and Registrations foresaid, to be insert therein, to appertain and belong to the present Clerk of Register, and his Deputes to be appointed by him to that effect. And decernes and ordeins the same Registers to be annexed and incorporate with the said office, and that the Clerk of Register, present, and to come, have the said Office as ane proper part and pertinent of the Clerk of Register his office, make, and constitute particular deputes, ane or moe for all the dayes of their life-times, or otherwise as he shall think expedient, of good fame, literature, and conversation, for whom he shall be answerable, and who shall be resident within the towns and places after-specified, at all times to receive fra the parties their Evidents, and to Registrat the same within the space of fourtie eight hours next after the receipt thereof, and to ingross the whole body of the writ in the Register, under the pain of deprivation of the Clerk of his place and service, and of the office of Notarie in all time thereafter. And within the same space shall deliver to the presenters of the samine, their Evidents marked by him, with the day, moneth, and year of the Registration, and in what leafe of the book the same is Registrat: and shall take allannerly for his paines *twenty six shillings eight pennies* money of this Realme, as the price of ilk leafe of his Register, containing no lesse then is in this present Act: and in case the leafe contain lesse to take lesse accordingly, and so proportionally for every page of the leafe, and part of the page, and according thereto shall take for Registering of every ane of the saids Evidents. And the saids Registers to bee filled up by the saids Deputes, to be marked by the Clerk of the Register & his Deputes to be appointed by him to that effect, with an note of the particular number of the leaves that the same shall contain: & the saids Registers after the filling up of the same to be reported to the said Clerk of Register, to remain with him and his

Deputes, and bee patent to all OUR Sovereigne LORDS Lieges, and extracts thereof to be given by him and his Deputes to be appointed by him, during all the dayes of their life-time, or otherwayes as he shall think expedient for that effect, to all shall have adoe with the same, which shall make as great faith, as the principals, except in case of improbation. And the saids Registers for the greater ease of the Lieges, to be established in the particular places following: That is to say, Ane in the town of *Kirkwail* in *Orkney*, for the whole lands lyand within the bounds of the Sherifdomes of *Orkney* and *Zetland*: and ane in the Burgh of *Innernes*, for the whole lands lyand within the Sherifdomes of *Innernes* and *Cromartie*: Ane in the Burgh of *Elgine* for the whole lands lyand within the bounds of the Sherifdome of *Forres* and *Nairn*: Ane in the Burgh of *Aberdeene* for the whole lands lyand within the bounds of the Sherifdomes of *Aberdeene*, *Bamfe*, and *Kincardin*: Ane in the Burgh of *Dundie*, for the whole lands lyand within the bounds of the Sherifdome of *Forfar*: Ane in the Burgh of *Perth*, for the whole lands lyand within the Sherifdome of *Perth*, and Stewardry of *Stratherns*: (exceptand the Stewardrie of *Menteith*) Ane in the Burgh of *Sterling*, for the whole lands lyand within the bounds of the Sherifdomes of *Sterling*, *Clakemannan*, and Stewardry of *Menteith*: Ane in the Burgh of *Cowper* in *Fife*, for the whole lands Lyand within the boundes of the Shirrefdomes of *Fife* and *Kinrosshire*: Ane in the Burgh of *Edinburgh*, for the whole lands lyand within the boundes of the Sherifdomes of *Edinburgh* principal, Constabularie of *Haddingtoun*, *Linlithgow*, and *Bathget*: Ane in the Burgh of *Lawder*, for the whole lands lyand within the Sherifdome of *Berwick*, and Baillrie of *Lawderdale*: Ane in the Town of *Selkirk*, for the whole lands lyand within the Sherifdomes of *Roxburgh*, *Selkirk* and *Peebles*: Ane in the Town of *Hammiltoun*, for the whole lands lyand within the Sherifdome of *Lanerk*: (exceptand the Burgh and Barronie of *Glasgow*.) Ane in the City of *Glasgow*, for the whole lands lyand within the boundes of the Sherifdome of *Renfrew*, and Baronie of *Glasgow*: Ane in the Burgh of *Dunbartan* for the whole lands lyand within the bounds of the Sherifdomes of *Dunbritton*, *Bute*, *Argyle*, *Arrane*, and *Tarbet*: Ane in the Burgh of *Air*, for the whole lands lyand within the bounds of the Sherifdome of *Air*, Bailierie of *Kyle*, *Carrick* & *Cuninghame*: Ane in the Burgh of *Wigtoun*, for the whole lands lyand within the bounds of the Sherifdome of *Wigtoun*: Ane in the Burgh of *Drumfreis*, for the whole lands lyand within the bounds of the Sherifdome of *Drumfreis*, Stewardries of *Kirkcudbright* and *Annandale*; Or any other place or places more convenient, as the Clerk of Register shall think most expedient, due intimation being made to the Lieges of the same. And the saids Evidents to be Registrare in the particular Books appointed for the lands within the bounds of ilk Sherifdome, Stewardrie, and Bailierie, as said is, or in the option of the party in the Books of Register or Session kept by the said Clerk Register himself or his Deputes to be appointed by him, during all the dayes of their lifetime, or otherwayes as he shall think expedient to that effect, in *Edinburgh*. And OUR said SOVERAIGNE LORD with advice and consent of the Estates decerns, and declares, this present Act to have the force, strength and effect of ane Decreet & Statute of Parliament, which shall have force & execution, according to the tennour thereof in all time to come. Ordaining publication to be made of the same in form as effeirs.<sup>221</sup>

<sup>221</sup> This act continues to be the leading statute respecting the registration of Sasines and other writs mentioned in it. But see Macallan's *Erskine*, b. ii. tit. iii. § 40, *et seq.* and editorial note, also A. S. S. 17th January 1756, and 10th July 1811.

17. *Anent the loosing of Arrestments.*

OUR SOVERAIGNE LORD considering the great abuse and corruption used in finding of caution to messengers for loosing of Arrestments in times by-gone, whereby his Highnesse Lieges have been heavily prejudged, the receiving of the said caution being committed to whatsoever Messenger of Armes the party pleaseth to chuse, who at the desire of the party, for the most part, receiveth irresponsal cautioners; and thereafter, when caution is found, there is no warning thereof giving to the party arrester; but only a ticket, under the messengers stamp and subscription, bearing him to have loosed the Arrestment, and to have received such a person cautioner: which ticket is not sufficient of the Law, to furnish action against the saids cautioners, without production of the principal Bands given to the said Messenger, receiver of the caution: which Band, if any were taken, remains in the hands of the Messenger, and is either loosed by negligence, or absented by malice, whereby the party is altogether prejudged of his action, which he had against the Cautioner, who was found for loosing of the Arrestment: For remedy whereof, OUR Sovereigne LORD with advice and consent of the Estates of Parliament, statutes and ordains, that all Bills and Supplications for loosing of arrestments, which shall be past and delivered by the Lords of Council in time comming, shall be past upon caution to be found in their Books, and ordaines the Clerk of the Bills to receive the said caution before the giving out of the same, for raising of Letters thereupon: and if any arrestments be otherwise loosed, the same to be null, and ineffectual.<sup>222</sup>

19. *Anent Doucats.*

OUR SOVERAIGNE LORD with advice and consent of the Estates of this present Parliament, considering the great inconvenients sustained by the Lieges of this Realm, through the frequent building of Doucats, by all manner of persons in all the parts thereof, statutes, declares, and ordaines, that hereafter no person nor persons, shall have power, libertie, nor priviledge, to build a Doucat upon any Lands within this Realme, neither within Burgh, nor in the Countrey, except that person, builder of the Doucate, have lands and teinds pertaining to him, extending in yearly Rent to *ten Chalders victual*, next adjacent to the said Doucat, at the least lying within two miles to the same: And als declares, that it shall nowise be lawful to the person foresaid, worth in yearly rent the foresaid *ten Chalders victual*, to build moe Doucates, upon, and within the bounds foresaid, except one Doucat onely.<sup>223</sup>

22. *Anent the imbringing of Protocolles.*

OUR SOVERAIGNE LORD understanding that that part of the Act of Parliament, made in *July*, 1587, Act xlv. intituled, *When, who, and how, Notars should be admitted, and of their Cautioners, and Protocolles*, Whereby it was Statute and Ordained. that all Protocol-Books of Notars, should be within fifteen dayes after the decease of the Notar, brought in to *Edinburgh*, and delivered to the Clerk of Register, or one of his Deputes appointed by him for that effect, hath not been

<sup>222</sup> In reference to this act, see Erskine, b. iii. tit. vi. § 13. See also 1st and 2d Vict. ch. 114, § 16-21.

<sup>223</sup> In reference to this act, see Erskine, b. ii. tit. vi. § 7.

put to due execution in time by-past, wherethrough his Majesties Lieges have sustained great hurt and damage : in so far as a great part of the Protocols, are vitiate and destroyed, by ryving out of the leaves forth of the saids Protocols, inserting and writing of false instruments upon the blank paper contained in the same Protocols : and sicklike, by inserting of sheets and quaires of new paper, whereupon instruments are falsified, by alteration of the dates of instruments, contained in the saids Protocols and many otherwayes, as hath been divers times exactly tryed by the Lords of Counsel and Session : and that the delaying of the execution of the said Act, hath proceeded upon an ordinance contained therein, of satisfaction to be given by the Clerk of Register or his Deputes, to the relict, children, or executors of the saids Notars, for the said Protocol, whereby the Clerk of Register or his Deputes, would be drawn to very great and intollerable charges, in regard of the great number of the saids Books.

THEREFORE, and for remedy thereof, OUR SOVERAIGNE LORD with advise foresaid, discharges that part of the said Act of Parliament, anent any other satisfaction to be given to the relict, children, or executors of the Notars already deceased, or that shall happen to decease, (except as is hereafter expressed) and Statutes and Ordaines, that all persons, alswel relict, children, executors of whatsoever notar already departed, or other person or persons whatsoever, havers in their hands, custodie, and keeping of any Protocol-Book, of whatsoever Notar already deceased, as of Notars that sall happen to decease at any time hereafter, shall after the decease of the Notar, inbring the saids Protocols to *Edinburgh*, and deliver the same to the Clerk of Register, or his Deputes, to be appointed by him for that effect, under the paine of *ane hundred pounds* to be incurred by them, who shall happen to be found to contraveen, and thereafter the saids Notars Books to be retained and kept by the Clerk of Register, or his said Depute, to be appointed by him to that effect. At the deliverie and inbringing of which Protocolles, if the same shall bee inbrought by the said relict or children, his Highnes with advice foresaid, Ordaines the said Clerk of Register, or his Depute foresaid, to make a note of the names of the said relict and children of the defunct Notars, to the effect, that whensoever any party shall pursue for transumpt of any instrument forth of the same, he shall be astricted hereby to summond, by the party having intresse, the relict and children of the defunct Notar, to the effect that the saids relict and children may be satisfied by the party, craving the transumpt of the said instrument, at the modification of the Lords of Councel and Session. And his Highness with advice foresaid declares, that this Act shall not be extended to the in-bringing of the protocolles of the Clerks of any free Burgh Royal within this Realme, deceased already, or that sall happen to decease hereafter : but the relict and children of the saids Clerks of free Burghs, shall be halden to deliver the saids Protocolles to the Provest and Baillies of the saids free Burghs, to remaine in the Register of the saids free Burghs, and to be made forthcoming to all parties, having intresse, whensoever they shall crave any instrument to bee transumed forth of the same at any time hereafter.<sup>224</sup>

<sup>224</sup> See 1587, ch. 29, here referred to, and note annexed to it.

## APUD EDINBURGH,

I DIE JUNII, A.D. M,DC,XXI.

5. *Anent the Plantation of Kirkes, as yet unplanted.*

OUR SOVERAIGNE LORD understanding, that there bee divers Kirkes within this Kingdome, which by the late Commission appointed for plantation of Kirkes, in the Parliament holden in Junij, 1617. were not settled nor provided with constant Stipendes: But which yet remaine disfurnished, and unprovided of competent meanes to be given to the Ministers, who shall be provided to the charge and function of the cure of the same. AND THEREWITH also His Majestie considering, That there have been heretofore sundrie Kirkes united together, and conjoined in one: albeit upon good considerations, it may be found more expedient, That the same union bee dissolved, and that the saids Kirkes bee provided severally, with distinct Functions, and separate services, at such places where the commodities may afforde, in the same manner, as if no such union had been made. And such like, because there be some Kirks, whereof the Parochine is of so large bounds, that many of the Parochiners, dwelling in rowmes of the Parochine so remote from the Kirk: who for the great distance of the Place, or for the interjecting of Waters betwixt their rowmes and the Kirks, which oftentimes, and especially in Winter, are not passable, or for some such other known impediment, cannot have accesse and repair to the Paroche Kirks at the ordinary times appointed for Divine Service and Worship, and enjoy the comfort of the Exercise thereof. AND OUR SOVERAIGNE LORD, according to the Princelie and Godly Indewments, wherewith his Majesty is singularly blessed, being most careful to establish all good order, and propagate the religious and true worship of GOD, universally throughout all this whole Kingdom; Where-thorow all His People may have occasion to participate the benefite of the Word, without feeling of any of these Prejudices, growing from the above-written occasions: Which his Majestie, in his Royal and Fatherly care over his People, is most desirous to have removed: THEREFORE, his Majesty, with expresse advice, and consent of the Estates of Parliament, Hath graunted full power and Commission, to the Lord Chancellor for the time: And to the reverend Fathers in GOD, *John*, Arch-bishop of *Sainct-Andrews*: *James*, Arch-bishop of *Glasgow*: *Alexander*, Bishop of *Dunkell*: *Adam*, Bishop of *Dumblane*: *Andro*, Bishop of *Galloway*: *John*, Bishop of *Caithness*: Sixe persons nominate for the *Clergie*, and Prelates. And in case of decease of any of them, to *Patrick*, Bishop of *Rosse*: and *Patrick*, Bishop of *Aberdene*. Which two persons the Estates have nominated, to supply, and become in the place of any of the other sixe aforesaid, if any of them shall happen to decease before this Commission bee finished. TO WIT, The first of the two, in place of the first of the six deceasing: To *John*, Earle of *Winton*: *Robert*, Earle of *Louthiane*: *Thomas*, Earle of *Melrosse*: *John*, Viscount of *Lauderdail*: *John*, Lord *Belmerino*: *David*, Lord *Carnagie*: Sixe persons nominate for the Nobility. And in case of any of their decease, To *John*, Earle of *Wigton*, nominate to become in the place of the first deceasing: And *Walter*, Earle of *Buckcleuch*, nominate to become in the place of the second. To the Commissioners under-written, nominate for the Barrons: To wit, *Sir Richard Cockburne* of *Clerkintoun*, Knight, Lord Privy Seale, *Sir William Levingstoun* of *Kilsythe*, Knight: *Sir James Dondas* of *Ar-*

*naistoun*, Knight: *Sir Archbald Napier of Merchington*, Knight: *Sir Andro Ker*, of *Phairnehirst*: *Alexander Lauder of Haltoun*. And in case of any of their deceasse, To *David Crichtoun of Lugtoun*: and *Sir John Hamiltoun of Prestoun*, persons nominate, to become in order, as they are named, in place of any of the six deceassing. And to *John Byres*, burgesse of *Edinburgh*: *Master William Fergusone*, burgesse of *Dondie*: *Andro Bell*, burgesse of *Linlithgow*: *Robert Taylor*, burgesse of *Saint-Andrewes*: *Master James Cockburne*, burgesse of *Haddingtoun*: and *Sir George Bruce of Carnock*, Knight, burgesse of *Culros*: Six persons nominate for the burrowes. And in case of any of their decease: To *Alexander Clerk Merchant*, burgesse of *Edinburgh*: and *Master Alexander Wedderburn*, Clerk of *Dondie*: persons nominate, to supply in order, any of the other six Commissioners foresaids deceasing. WHICH foresaids Commissioners, or any foure of each Estate nominate, as said is, consenting and agreeing in one voice, shall have power to consult, conveye, and determine, upon the matters, and in manner under-written: Providing allwayes, That there is, and shall be requisite to the validitie of any Act, Conclusion, Ordinance, and Determination of the saids Commissioners, The conjunct assent of foure of every one of the saids four Estates, all agreeing together in one voice. Without the which consent of the said foure of every Estate so agreeing, The rest of the saids Commissioners shall have no power to make any valide, or effectual conclusion, by vertue of this present Commission: But whatsoever shall be otherwayes done, is declared to be of none avails, force, nor effect.

THAT IS TO SAY, Our Sovereign Lord, and Estates of Parliament, by the Tennor hereof gives, grauntes, and committes, full power and authoritie to the saids Commissioners, to meete, and conveye, in the Towne of *Edinburgh*, at such time, and times, as they shall appoint, and finde convenient: And there to call, and summonde before them, all Patrones, Tackes-men of Teynds, great and small, and others, having right, by whatsoever Title, of the Teyndes of any of the Kirks within this Kingdom, which are not already planted by the foresaid first Commission: and which shall any wayes be meddled with by this present Commission, as they shall think necessary, and expedient, To exhibite, and produce before them, their Rights and Titles, whereby they claime the said Teynds, to be seen, and considered, by the saids Commissioners: With power unto them, out of the saids Teynds, of every Parochine and Kirke, not already planted: To appoint and assigne, at their discretions, a perpetual local Stipend to the Ministers present, and to come, at all the saids Kirks, unprovided, as said is: AND that notwithstanding any Right or Title pretended by the saids Tackesmen, or others, in whose favours Teyndes have been erected: With power also, to the saids Commissioners, to dis-unite such Kirks, one or moe, as were united of before, and appointed to be served by one Minister. And as they upon good considerations shall finde requisite to appoint the same to be served by several functions, and charges, as distinct parochines, after such manner as shall be found by them most expedient. Providing allwayes, That all parties having interesse in the union, and dis-uniting of the saids Kirks, and plantation thereof, give their expresse warrand and consent thereunto.

IN the which case of Plantation, and provision of the Kirks which shall be dis-joyned, as said is, the presentation of the Ministers shall be appointed by the saids Commissioners, to pertain to the Patrons, conform to their rights thereof, to be produced before them. And as the saids Lord Commissioners shall finde most agreeable with reason and equity. With power likewise to the saids Commissioners to appoint and set down such solide order, for erecting and building of new

Kirks, in any Parochines, where they shall finde necessitie and conveniencie to do the same, and where the Parochiners are not presently well and commodiously served at the present Kirks of the Parochine, as they shall finde most expedient. And the saids Kirks, being erected, with power to the saids Commissioners, to provide the same with such proportion of Stipends, as they shall finde may be with least prejudice, and best commoditie, maid out of the fruites of the saids Parochines, to the Ministers, to be appointed to serve at the saids new builded Kirkes; To the which building and making of new Kirks, and providing of the same with competent Stipends, The saids Estates findes and declares, that it shall be expresalie necessarie, that the Patrons, Tacks-men, and other parties having Interesse in the Erection and building of the saids new Kirks, and in the planting and provision thereof foresaid, give their expresse warrand and consent thereunto. Which being so had, and obtained, With power to the saids Commissioners, to proceede therein as is most agreeable with reason.

IT IS alwayes declared, that in all and every one of the cases above-written : that is to say, either in providing of Kirks not planted of before, or in dis-uniting of kirkes formerly joyned : and appointing of severall and distinct Stipends to the same : Or in the Erecting of new kirks, and provision of them with Ministers, and stipends, The saids Commissioners shall have expresse power and warrand to determine, and appoint such proportion and quantity, as they shall finde expedient, either amounting over the sum of five hundreth Merks, or beneath and under the same, as they shall finde may most conveniently and commodiously be had : after the consideration of the quantity and estate of the fruites of the kirke, and the case wherein the same is : And as may be with least prejudice spared out of the same. AND the saids ESTATES finds and declares, That the saids Commissioners shall have no power, by vertue of this Commission, to alter, or meddle with any kirk, which was settled by vertue of the foresaid Commission, graunted in *Anno* 1617. yeares ; Or to change the estate thereof in any wayes : Or yet to erecte, builde or provide any new kirke without the special and expresse consent of all parties, having Interesse, had, and obtayned thereunto : Without whose consents, it shall not be lawful for the saids Commissioners, in any wayes, to touch the saids Kirks so provided : But the same are expressly excepted (Except in case of consent foresaid) out of this present Commission.

AND ALSO, Forasmuch as the saids ESTATES of Parliament, considering the particular Petitions and supplications after specified, given in to them by the persons under-written, to the effect following : to wit, a petition given in by *Thomas Burnet of Leyes* ; Desiring a new Kirk to be erected, and builded, within the Parochine of *Fetteresso*, upon any part within the same Parochine, most ewest for the instruction of the Parochiners of *Fetteresso*, who dwell most remote from the present Kirk thereof, Item, a Supplication given in by the Gentlemen and Parochiners of the Parochine of *Roismethe* ; Desiring that the Kirke of *Roismethe*, for the causes specified in their Supplication, founded upon the incommodious situation of the said Kirk, might be transported out the Yle of *Roismethe*, where it presently standeth, to that part of the maine Land of the said Parochine, called the lands of *Ardinconnel*, as place most convenient, and indifferent for the whole Parochiners to resort unto. Item, a Petition given in by *John Earle of Wigton*, Lord *Fleeming*, and remanent Parochiners of the Parochine of *Leinzie* : craving licence to transport, found, build, and erect, the Kirk of the said Parochine of *Leinzie*, presently standing at the West end of the Parochine thereof : to any other part of the same Parochine, near the middest thereof, most con-

venient for the ease of the whole Parochiners: And being builded, to be declared to be the only Kirk of the said Parochine of *Leinzie*. Item, two Warrands given in under His HIGHNESS Hand, concerning the appointing and determinating, which of the two Kirks of *Larbaire* and *Domypace* formerly united, should be the ordinary place of publick Divine Service of the saids two Parochines, As in the same two Patentess containing their own several desires at more length is contained. Item, a Petition given in by the Parochiners of the Parochines of *Kilcharrane*, *Kilmichael*, and *Kilchuslane*, united by the former Commission: and of the Parochines of *Kilcolmkil*, and *Kilblane*, also united by the same Commission: all lying within *Kintyre*: Desiring Libertie for building and erecting of a Kirk for serving of the first three Parochines, with another Kirk for serving of the two last Parochines, both united as said is. Item, a Supplication given in by *John*, Lord *Hay* of *Zester*, and the possessors of the Lands of *Rodonno*: Desiring that the same Lands of *Rodonno*, with the Pertinents, should be declared to have been, and to be in time coming, a part of the Parochine of *Lyns*, as also craving, that it might be lawful to the said *John*, Lord *Hay*, of *Zester*, to build a Kirk upon the most commodious place of his lands of *Rodonno*, or *Megget*, for serving of the Inhabitants thereof, at such times as they should be impeded by storme of weather, from coming to the Kirk of *Lyns*. Item, a supplication given in to the saids ESTATES Desiring, that the dissolution of the fourty pound land of *Buchanane*, from the Kirk of *Lusse*, and union thereof, to the Kirk and Parochine of *Inschcalzieoch*, done by the former Commission, might be now ratified: and the same fourty pound land, declared to remaine in time coming, as a part of the parochine of *Inschcalzieoch*, Item, a Petition given in by *Patrick*, Bishop of *Aberdene*: Desiring the ESTATES, to give power to the foresaids Commissioners, to ratifie and approve the voluntary Dissolutions of the former unions of these Kirks within his Diocie, to the several provisions, whereof the parties having Interest thereintil, have consented, and to admit these who make offer at the sight of the Bishop and Presbyterie, where the Kirks lye, to provide the same severally, Albeit they shall not make out the full rate and stipend appointed by the last Commission. And last, a petition given in, by the Minister at the Kirk called *Christs Kirk*, at *Vdney*: craving the same Kirk to be sufficiently planted, and provided, with a constant and local stipend, and the same made sure to the Minister serving the cure at the said Kirk, as the foresaids Supplications, Petitions, and Patentess [respective] above-written, in themselves more fully proports.

AND Finding the Desires foresaids reasonable, Our said Sovereigne LORD, and ESTATES of Parliament, Gives, Graunts, and commits full power and authority to the saids Commissioners, to appoint, determine and set down, such solid Order anent the whole particulars above-mentioned, and every one of them, as they after consideration and tryal had, and taken by them thereanent, shall find most expedient, and agreeable with reason, To the doing whereof, in every one of the particulars foresaids, (Except anent the building of a new Kirk within the Parochine of *Fetteresso*, as is desired by the Laird of *Leyes*) THE ESTATES Findes, and Declares, That it shall be only necessary to summond all Patroness, Tacks-men, and other parties whatsoever, having interesse in the particulars foresaids, to hear and see order taken in the premisses thereanent: That after citation, the Commissioners may consider of the Interesse and prejudice, if any shall be qualified by any person before them, anent the particulars above-mentioned: and may then proceed therein, as they shall find most expedient. But the ESTATES findes, and



declares, That in the setting and determination of the first particular above-mentioned, anent the building of a new Kirke within the Parochine of *Fetteresso*, There shall be expressly requisite, the special and expresse consent and warrant of the Parties, having Interesse thereintil : By, and beside the citation and summoning of them to that effect : AND findes, and declares, That the Decreet and Sentence of the saids Commissioners, to be given by them in all the particulars foresaid, and every one of them shall have the strength, force, and authority of a Sentence, and Act of Parliament, such like as the same had been done, and determined by the saids Estates themselves.

AND Because Reason and Equity craveth, That recompence should be made unto the Tacks-men, and other persons whatsoever, who shall be by the sentence of the saids Commissioners, hurt and prejudged of their present profite, which they may lawfully bruike, by vertue of their Titles and Rights, established in their persons : and upon whom, by vertue of the said Sentence, any Burthen of the Sustenation and provision of the saids Kirks and Ministers is to be imposed : THEREFORE, Our Sovereigne LORD, and ESTATES of Parliament, Gives full power, and commission, to the saids Commissioners, so to proceed in the determining of the said recompence, that in case the Lord, or any other having right to erected Prelacies, who shall be cited before them, refuse to take the Burthen of Plantation of any Kirks belonging to the saids erected Prelacies, which are in any of the cases above-written : And that upon their refusal, (the same refusal being first found reasonable by the saids Commissioners) the burthen of the said plantation shall be laid and imposed by the saids Commissioners, in whole or in part, either upon the principal Tacks-men of any of the fruites of the saids Kirks : Or in case of the Tacks-mens refusal, the burthen be imposed upon the Sub-Tacks-men thereof : The saids Commissioners shall have power to decern, appoint, and ordain, such particular recompence to be given unto the saids Tacks-men, or Sub-Tacks-men, by renewing of their Tacks, or Sub-Tacks, after the expiring thereof, upon such conditions, as the saids Commissioners shall find reasonable ; Respect being had to the quality and proportion of the burthen to be imposed upon them, within the time of their Tacks and Rights, farther than they are astricted by their saids Rights ; or by appointing such other reasonable satisfaction, as they shall find the said burthen and distresse undergone by any of them, shall deserve, and require.

LIKEAS the saids Commissioners shall have such like power to determine, decerne, and appoint such particular satisfaction, and recompence, to be given either to the Laicke-patrons, or to the Tacks-men of the Fruiters of the Kirks, belonging to the like Patronages and Sub-Tacks-men thereof, as they shall thinke may be answerable to the burthen to be imposed upon either of them, for the cause above-written proportionally. IN THE prescribing of the which recompence, The saids Commissioners shall have special respect, what consideration they find reasonable to be given to the saids Patrons, for their consents to the Tacks, if any shall be appointed, and decerned to be sette, and given unto the saids Tacks-men, for recompence foresaid. AND if any beneficed person, upon just and reasonable causes, refuse to provide any Kirk belonging to their benefice, according to the order hereby prescribed, whereby the burthen of plantation, or farther provision of the Kirk, must necessarily lye upon the Tacks-men, or Sub-Tacks-men of the fruits thereof : The saids Commissioners, in that case also, shall decerne such recompence to be given to the saids Tacks-men, and Sub-Tacks-men, for their losse and prejudice sustained,

as the saids Commissioners shall find the same shall merite, by renewing of Tacks unto them, upon such conditions as may requite their losse: Or by finding out some other reasonable meane, which may repaire the same.

AND OUR said Sovereigne LORD with advise and consent of the saids ESTATES, Declares, statutes, and Ordaines, that all Tackes, which shall bee decreed by the saids Commissioners, to bee given in recompense to any person whatsoever, for the causes above-written: and which shall be set for obedience, and conforme to the said Decreete, and sentence, whatsoever yeares, or long space the saids Tackes shall comprehend, shall be good, lawful, and sufficient securities, to the persons in whose favours the same are appointed to be given, and conceived. Neyther shall the same be any wayes prejudged, by the Act made in the Parliament holden in Anno 1617. By the which it is statuted, THAT no Arch-bishop, Bishop, or Prelate, should sette in Tacke any part of their Patrimonie, for longer space nor nineteene yeares: AND, That no inferiour beneficed persons shall sette in Tacke any part of their Benefice for longer space nor their own life-times, and five yeares there-after, as the statute purports: From the which statute the saids Tackes so appointed to bee set, and given in recompense, are, and shall be excepted, and reserved, and shall no-ways come under the compasse of the same Act and statute, nor of any thing therein contained. But the same shall remaine, and abide, valide, and sufficient rights, for the whole space and yeares appoynted therein, according to the Tennor thereof: notwithstanding of the said Act and Statute. And because it may fall foorth, That in the recompense to bee appoynted by the saids Commissioners, to the Patrones, Tackes-men, and Sub-Tackes-men, for the aforesaid burthen to bee imposed upon them, Moe yeares may be assigned for prorogation of their present Tackes, nor may lawfully, or conveniently be set, by the present beneficed persons, to whom by Law the setting of Tacks of Teynds belongs.

FOR REMEED Thereof, OUR Sovereigne LORD, with advise and consent of the saids ESTATES, Declares, Statutes and Ordaines, that it shall be lawful for the Commissioners foresaids, to appoynt as many yeares after the expyryng of the present Tackes, to the Tackes-men of the saids Kirkes, and Teyndes: Or to the Patrones or Sub-tackes-men (*respective*) for bruiking of the saids Teyndes, for recompense of the said Burthen, as they shall thinke reasonable: Which shall be as good, valide, and sufficient Rights, to the saids Patrones, Tackes-men, or Sub-tackes-men, (*respective*) and unto their Heires and Assignays, for bruiking, possessing, and disponing on the saids Teyndes, during the saids yeares of Prorogation: As if good, lawful, and valide Tackes and Rights of the saids Teyndes had been sette, and made to them, by the Titulares of the Benefices, to whom the same belonged, With consent of all parties having Interesse. WITH expresse provision and declaration, That at the expyryng of all the saids yeares, the right of the saids Teyndes, and power to sette Tackes thereof, shall returne, and appertaine to the aforesaid Titulares of the foresaids Benefices, as they did before the making of this present Act. AND OUR said SOVERAIGNE LORD, with advise of the ESTATES, Declares, and Ordaines this present Commission to beginne upon the tenth day of Januarie, next-to-come: with continuation of dayes: and to last and endure, during the space of year and day thereafter. After the which time, the same shall cease and expire: And ordaines the Decreete, and Sentence of the saids Commissioners in all the particulars foresaids, and everie one of them, to have the strength, force, and authoritie of a Decreete, Sentence, and Act of Parliament. For obedience whereof, the Lordes of Session shall direct and grant Letters in

forme as effeires, and according as shall be necessarie, Which Commission above-written, taking force, and full effect, in all the saids particulars therein contained, as the same are set downe, and comprehended therein, by pronounciation of decreete and sentence upon the same, conforme to the power therein comprehended, given unto the saids Commissioners.

OUR SOVERAIGNE LORD with expresse consent, and assent of the ESTATES, in that case, findes, and declares, That no person, in whose favours the Teyndes of Kirkes, and Benefices, are erected: nor no other whatsoever, bruiking Teyndes, by vertue of rights lawfully made to them of the same, according to the Lawes of this Realme then standing, shall be ever farther altered, or quarreled in any of their saids rights in any time to come, further then shall be appoynted by the said decreet and sentence to follow upon this present Commission. But the saids rights and securities in-case foresaid, shall remaine in their owne strength, force, and effect, as good, lawful, and sufficient rights, and securities, unto them, and every one of them, for their owne parts, for bruiking and enjoying the saids Teyndes, conforme to the tennour of the saids rights, for now, and for ever.<sup>225</sup>

#### 6. *Anent Comprisings.*

OUR SOVERAIGNE LORD, and ESTATES of Parliament, considering that his Majesties Lieges are greatly damnified, and prejudged, by the abuse and evil custome, which heretofore hath been observed in Comprisings: whereby Lordships, Baronies, and other great portions of Landes are comprised for small summes of money: and thereby the compriser hath right to the mailles, duties, and profits of the Landes: notwithstanding that they farre exceede the profite of that summe of money for the which the saids Landes are comprised. FOR remeede whereof, It is statuted and ordained, That the compriser shall have no further right to the mailles, fermes, and duties of the comprised landes, by vertue of the comprising led at his instance, during the yeares and space that the same is redeemable, but onely to such part and quantitie thereof as will corresponde to the Annuel-rent of the summe, at ten for the hundreth, for the which comprising is led; with this provision alwayes, and expresse declaration, That if the mailles and duties of comprised landes exceede the proportion of the annuel rent of the fore-saids summes, for the which the comprising is deduced, and that the compriser please to intromet therewith, and according thereunto, that he have intromission with the same, in that case his foresaid further intromission, which shall extend to any greater quantitie then will justly satisfie him of the foresaid Annuel-rent, shall be ascribed in payment and satisfaction of his principal summes, [*pro tanto*]

LIKE AS THE ESTATES findes and declares, That the same further intromission shall bee ascribed in that payment of the said principal summe: So that if it shall happen, that the quantitie of the mailles and duties to be intromitted with by the compriser, to extend unto as much as will satisfie the whole principal summes, with the ordinarie Annuel-rent thereof, according to ten for each hundreth, and the expenses bestowed by the Compriser, in passing, and obtaining Infestment of the Superiour, of whom the Landes are holden: together with the Annuel-rent of the saids summes, so given by the Compriser to the Superiour, for entring of him to the comprised lands, and the necessarie expenses and charges waired and bestowed by the said Compriser, in leading and deducing the said comprising, in

<sup>225</sup> See note to 1617, ch. 3.

that case, thereafter the comprising to expyre [*ipso facto*] and to cease in all times following.

AND IF that the person against whom comprising is led, be Minor, and of lesser age, IT IS statuted and ordained, That it shall be lawful to him at any time within his perfect age of twentie five yeares compleate, to redeeme the saids comprised landes, by payment of the summes, for the which the said comprising was led, and of the lawful annuel-rentes thereof, according to ten for each hundreth; Together with the expenses bestowed in passing and obtaining of the Infetment from the Superiour, and ordinarie annuel-rent of the same: together also, with the necessarie expenses bestowed in leading and deducing of the said comprysing, as is above-written. And that notwithstanding of the preceeding Lawes, and Practique of this Kingdome, by the which the Legal reversion of comprised Landes, expired within seaven yeares after the leading of the comprising: From the which His Majestie and Estates hath, by this present Act and Statute, excepted Minors, in all times comming, declaring the same no-ways to run against them. BUT IT IS Declared, that if a Minor redeeme not Landes comprised, (the right of reversion whereof is competent in his person) within seaven yeares after the leading of the said comprysing, but according to the benefite granted unto him by this present Act, suffer the comprysed Landes to remaine unredeemed, with the compriser, during all the years of his Minoritie, and lesse age: then, and in that case, the compriser shall have good right, to meddle, and intromet with the whole Mailes and Dueties of the comprised Landes of all these yeares subsequent, after the expyryng of the saids seaven yeares, and interveening betwixt them, and the saids yeares of his Majoritie, and perfect age of twenty five yeares compleate: Notwithstanding that the dueties of the landes extende to more then will answers to the annuel-rent of the money for the which the land is comprised. And if it shall happen a Minor, having right to redeeme comprised landes, as said is, to deceasse before he be of perfect age of twentie five yeares, and that another Minor bee Heire, or Succeede unto him in his right of reversion, and title, competent to him, for the redemption of the saids comprised landes: that Minor so succeeding in the rights, shall have the same libertie and priviledge above written, for redemption of the saids landes, sicklike, and in the same manner, as if they had been comprised from himselfe, wherein he shall nowayes be prejudged by the yeares which ran after the comprising, in the life-time of that person Minor in whose right he succeedeth, but that he may sicklike lawfully redeeme the same at any time before his Majoritie, as said is.

AND IT IS Declared, That in case any Minor, having the right of the said reversion competent unto him, shall happen to decease after the expyryng of seaven yeares out-run, after the said comprysing, and that a person of perfect yeares succeed to the said Minor, in the right of his reversion aforesaid: in that case the said person Major so succeeding, shall be holden and astricted to redeeme the saids comprised Landes, within the space of year and day after the deceasse of the said Minor, in whose right he succeedeth. Otherwayes, the said Redemption not being used by him within that space, he shall bee perpetually secluded from all benefite, which hee may claime by the reversion and succession there-unto-forsaid, and all power of Redemption of the saids Landes, by vertue thereof. But if at the time of the Minors deceasse, all the saids seaven years were not expyred, It shall be lawfull for his said successor (being Major) to redeeme, within the space of so many of the saids seaven yeares, as were not out-run the time of the Minors de-

ceasse : such like as if the saids Landes had been comprised from the said Minor himselfe. Which time being expyred, and hee doing no diligence, hee shall bee excluded from the benefite of his reversion.

AND IT IS specially provided, That in all the above-written cases, if the comprised Landes bee not worth such yearly quantitie of Maile and Dutie, as will proportionally effeire to the Annuel-rent of the said Money, at ten for every hundreth, for the which comprising is led : or being worth that the same is exhausted by other lawful deeds : which may render the same unprofitable to the compriser, and un-answerable to the Annuel-rent of the summes, for the which he hath comprised, either in whole, or in part : then, and in that case, the redeemer (whether he be Major, or Minor) shall be holden, before hee can redeeme, or out-quite the saids Landes, from the compriser, to refound and pay to him, the full Annuel-rent and profite of the summes, for the which the landes were comprised, so farre as he wanteth, and inlacketh, by the benefite of his said comprising. And if the rent of the Land so comprised, consist in victual, The estimation and consideration thereof, shall be had according to the common prices of victual in those Shyres where the comprised landes lye : according as the same giveth betuixt Zuile and Candlemesse. AND the saids ESTATES Declares, That this above-written Statute shall no-ways extend, nor be prejudicial to comprisings, which are already prescribed before the date of this present Act.<sup>226</sup>

#### 7. *Anent Adjudications.*

OUR SOVERAIGNE LORD, AND ESTATES OF PARLIAMENT, Considering the great prejudice sustained by diverse and sundry Creditours, by decrease of their Debtors : who being preveened by the diligence of their Concreditors, by obtaining of sentences of Adjudication of their defunct Debtors, Landes, and Estate, in respect of the refusal of the nearest of Kin, to enter Heires to them, are secluded from participation of any part of the landes and goods pertaining to their saids defunct debtors : they being common debtors to the saids whole Creditors, contrarie to all equitie and reason. FOR REMEED whereof, It is Statute, and Ordained, THAT All Adjudications to be obtained by any person at any time hereafter, of any of their defunct debtors landes, and Estate whatsoever, with all rights and Infestments following there-upon, shall be redeemable from the partie obtainer of the said Sentences of Adjudication, their heires and assignays, at any time after the pronouncing of the same, AT the instance of any Concreditor of the said defunct debtor, or of any Creditor of the said person, who renounceth, To be Heire to his predecessors, who shall happen thereafter to obtain decreet of Adjudication, against the appearing Heire of the defunct debtor : And that within the space of seaven yeares, next and immediatley following the obtaining of the saids Sentences of Adjudication, by payment of the summes of money specified in the saids Sentences : Together with the Annuel-rent of the same summes, according to ten for each hundreth thereof, during the time of the not-redemption of the same : and of the expenses sustained by them in obtaining of the saids Sentences, to be taxed,

<sup>226</sup> This act, which was ratified in part by 1663, ch. 4, remains in force so far as it is capable of being applied to adjudications, and so far as it is not derogated from by subsequent authorities. See 1661, ch. 344 : 1663, ch. 4 ; 1672, ch. 45, which substituted the process of adjudication in place of the ancient diligence of apprising, and A. S. 26th February 1684. See also Erskine, b. ii. tit. xii. § 18, *et seq.* Brodie's Note on adjudications in his edition of Stair, p. 460, *et seq.*, and also article " Adjudication for Debt " in Bell's Dict. and Dig.

and modified, by the Lords of Council and Session. By payment of the which summes, the said Concreditor shall come in the place and right of the partie from whom he redeemeth : And shall bruik the same by vertue thereof, perpetually thereafter : Except it shall happen another Concreditor, who shall obtaine the like sentence of Adjudication to redeeme the same from him, within the space above-written. In the which case, it is declared, That the partie redeemer, in the second, third, or fourth rowme, and so forth, so long as there are any Concreditors, shall be oblished not only to pay the summes contained in the adjudication, obtained at the instance of the partie from whom he redeemeth : But also the whole summes, which were payed by him unto the former Concreditors, for redemption of their Adjudication, with the annuel-rent, and expenses in manner above-specified.

IT IS alwayes Declared, That if the partie from whom the saids Adjudications shall be redeemed, did up-lift the Fermes, and duties of the lands and others, contained in the Adjudications : That then, and in that case, the partie redeemer shall not be holden to pay any annuel-rentes, or expenses : but in so farre as the same annuel-rents, and expenses, exceede, and are more, than the Mailes, Fermes, and duties, intromitted with by the partie from whom the same is redeemed. AND if the saids Mailes, Fermes, and Duties, exceede both the annuel-rent and expenses. IT IS Declared, That the super-plus shall be allowed in the principal summe, by the sight of the Lords of Council : Consideration being had of the pryces of the Fermes, and Victual, as the same were commonly sold betwixt Zuile and Candlemesse, in the Sherifdome where the lands lye. IT IS alwayes declared, That these presents shall no wayes be extended to Decretes, and Sentences of Adjudication already recovered.

AND sicklike, it is Declared, That in-case any Minor, who hath renounced in his Minoritie, be reponed [*in integrum*] against the same renunciation : That then, and in that case, he shall have place to redeeme from the whole Creditours, by payment of the saids whole summes owing unto them, and whereupon they obtained Adjudication in manner, and with the provisions above-specified. And all the rest of the Priviledges granted to Minors, in Comprisings, to be likewise granted in Adjudicationes : which are here holden as repeated.<sup>227</sup>

8. *Anent the Extracts of Infestments, past upon Comprisings, fourth of the Privie Seale : where the same are not registrated at the Great Seale.*

OUR SOVERAIGNE LORD, and ESTATES of this present Parliament, Understanding that sundrie His Majesties Lieges, who for great summes have comprised their debtors Landes, are heavilie prejudged, through the fraudful abstracting or destroying of the Writtes, Infestments, or Confirmations of the saids comprised Landes : the saids Writtes, Infestments, and Confirmations, not being registrated in the Register of the Greate Seale. HEREFOR, whereas any Creditour hath comprised lands holden of His Majestie, and cannot recover fourth of the persons hands, from whom the same are comprised, the KINGES right, and confirmation of the same Infestment, given unto them thereof, Lest the negligence of the partie, not registrating the Infestment, or Confirmation, after the passing thereof at the Great Seale : Secunded with the subsequent fraude, in abstracting and destroying the principal Right and Confirmation, should unjustly in damage the true Credi-

<sup>227</sup> This act was partly repealed or superseded by 1661, ch. 344 ; and 1672, ch. 45, which see. See also Erskine, b. ii. tit. xii. § 49 ; and Stair, b. iii. tit. ii. § 50.

tor, and Compriser: His MAJESTIE, with advice and consent of the saids ESTATES, willes, and declares, That if the saids Infestments, and Confirmations of the saids persons, from whom the saids lands are comprised, have past the Privie Seale, and be registrated in the Register thereof: That notwithstanding the want of the Infestment and confirmation under the Great Seale, or the Extract thereof: the Extract of the said Infestment, or Confirmation, foorth of the Register of the Privie Seale: The same thereafter being past the Great Seale, at any time shall be a sufficient right to the Compriser, whereby to possesse and enjoy the landes comprised: conforme to the Lawes made anent Comprisings: as freely in all respectes, as if the saids Infestments and Confirmations were extant, and registrated in the Register of the Great Seale. Providing alwayes, That this present Act shall no wayes hurt nor prejudice any third person, who hath Infestment or Confirmation of the saids comprised lands, past the Great Seale; of an anteriour date to the said Infestment, so past the Greate Seale, in manner aforesaid: but shall be onely of force and effect against that person, from whom the lands are comprised, his Heires, and Successours.<sup>228</sup>

10. *Declaring summes Grass, given to the Ministers, for their Gleybes to be Teynd-free.*

OUR SOVERAIGNE LORD, and ESTATES of this present Parliament, considering in the fifth Parliament holden by his MAJESTIE, upon the twentie five day of Julie, in Anno one thousand, five hundreth, threescore, and eightene yeares: Chap. 62. His Highness with advice and consent of the ESTATES, Found, and declared, That the Ministers and Readers ought and should pay no Teynd for their Gleybes, and Kirke-landes, extending to foure Ackers of Land, designed unto them conforme to the Act of Parliament: But decerned and declared them to be free of their saids Teyndes, and discharged them [*Simpliciter*] thereof in all time cumming. LIKE AS in the Parliament holden at Perth, the ninth of Julie, in Anno one thousand six hundreth, and six yeares, Chap. 7. It is Ordained, That there shall be designed to the Ministers serving the cure at Kirkes, where there is no arrable land adjacent there-unto, the number of four Summes Grass for every Acker, of four Ackers of Gleybe, extending to sixteen summes Grass, for the foure Ackers of Land, and that of the most commodious and best pasturage of any Kirk-landes, lying next adjacent, and most ewest to the Kirk: And ordained letters to be directed, for removing the possessours there-from: in sicklike forme as against the possessours of Manss and Gleybes. And in respect that the Ministers Gleybes are Teynd-free, and that by consequence the summes Grass above-mentioned, designed in steade thereof, where no arrable land is adjacent unto Kirkes, ought likewise of all equitie and reason to be Teynd-free, in respect the same is dedicated and appointed *ad pios usus*.

HEREFORE, Our said Sovereigne LORD, with advice and consent of the whole Estates of this present Parliament, by the tennour hereof, declares, That the Ministers and Readers ought, and should pay no Teynd for their summes Grass, designed unto them in place of their Gleybes, where no arrable landes are adjacent to Kirkes. And decernes and declares them to be free of their Teynds, and discharges them [*Simpliciter*] of all payment thereof, in all time comming.<sup>229</sup>

<sup>228</sup> In reference to this act, see Mackenzie's Observations, p. 359.

<sup>229</sup> In reference to this act, see Connell on Tithes, vol. ii. p. 50, 51. The acts here referred to are 1578, ch. 6, and 1606, ch. 6.

14. *Anent playing at Cardes and Dyce, and Horse-races.*

OUR SOVERAIGNE LORD, And ESTATES of Parliament, Considering the manifold evils, and inconveniencies, which ensue upon Carding and Dycing, and Horse-races, which are now over-much frequented in this Country, to the great prejudice of the Lieges. And because honest men ought not to expect that any winning had at any of the Games above-written, can do them good, or prosper: HAVE therefore, statuted and ordained, That no man shall play at Cards nor Dyce in any common-house, Town, Hostelry, or Cookes houses, under the pain of forty pounds, money of this Realme; to be exacted of the keeper of the saids Inns, or common houses, for the first fault: and losse of their liberties for the next. Moreover, That it shall not be lawful to play in any other private mans house, but where the Master of the Family playeth himself. And if it shall happen any manne to winne any summe of money, at Carding or Dycing, attour the summe of an hundreth Merks, within the space of twenty-four houres: or to gaine at Wagers upon Horse-races, any summe attour the said summe of an hundreth Merks; The superplus shall be consigned within twenty-four houres thereafter, in the hands of the Thesaurer of the Kirk, if it be in *Edinburgh*: Or in the hands of such of the Kirk Session in the Countrey Parochines: as Collects and distributes money for the poor of the same; To be employed alwayes upon the poor of Paroche, where such winning shall happen to fall out. And to the effect, that either excesse in play may be thus restrained: Or at the least, excessive winning may be employed as said is. OUR Sovereign Lord, by Act of his Supream Court of Parliament, Gives full power, and Commission, to the Bailies and Magistrates of Burrowes, the Sheriffs and Justices of Peace, in the Country, to pursue, and conveen all such persons, for all winning at Cardes, Dyce, and Horse races, which shall happen to be made by any person, by and attour the said summe of an hundreth Merks, money aforesaid. And in case the Magistrate informed thereof refuse to pursue for the same, The party informer shall have action against the said Magistrate, for double the like summe: The one half whereof to be given to the poor, and the other halfe to the party informer.<sup>220</sup>

18. *A Ratification of the Act of the Lords of Council and Session, made in Julie 1620. against unlawful Dispositions and Alienations, made by Dyvours and Banck-rupts.*

OUR SOVERAIGNE LORD, with advice and consent of the ESTATES, conveened in this present Parliament, ratifies, approves, and for his Highnesse, and his Successours, perpetually confirms the Act of the Lords of Council and Session, made against Dyvours and Banck-rupts, at *Edinburgh*, the 12. daye of Julie, 1620. and ordaines the same to have, and take full effect, and execution, as a necessarie and profitable Law, for the weale of all his Highnesse Subjectes: Of the which Act the tenor followeth.

THE LORDS Of Council and Session understanding, by the grievous and just complaints of many of his Majesties good subjects, that the fraude, malice, and falshood of a number of Dyvours and bankrupts, is become so frequent, and avowed, and hath already taken such progresse, to the overthrow of many honest mens fortunes, and estates; that it is likely to dissolve trust, commerce, and faithful deal-

<sup>220</sup> In reference to this act, see Bell's Commentaries, vol. i. p. 299, *et seq.*; and Bell's Dict. and Dig. art. "Gaming and Betting," and authorities there referred to.



ing amongst Subjects: Whereupon must ensue the ruine of the whole Estate, if the godlesse deceites of those be not prevented, and remedied; who by their apparent Wealth in Lands and goods and by their shoue of Conscience, Credite, and Honestie; drawing into their hands upon trust the Money, Merchandize, and Goods, of well-meaning and credulous persons, doe no wayes intend to repay the same: but either to live ryetously by wasting other mens substance: or to enrich themselves, by that subtil stealth of true mens goods, and to withdraw themselves, and their goods forth of this Realme, to elude all execution of Justice: And to that effect, and in manifest defraud of their Creditours, do make simulate and fraudful alienations, dispositions, and other securities, of their Lands, Reversions, Teyndes, Goods, Actions, Debtes, and others belonging unto them, to their Wives, Children, Kins-men, Alleyes, and other confident and interposed persons; without any true, lawful, or necessarie cause: and without any just or true price interveening in their saids bargaines: Whereby their just Creditours, and Cautioners, are falsly and godlesly defrauded of all payment of their just Debts; and many honest Families likely to come to utter ruine.

FOR remeed whereof, the saids LORDES, according to the power given unto them by His Majestie and His most Noble Progenitors, to set downe orders for administration of Justice: meaning to follow and practise the good and commendable Lawes, Civil and Canon, made against fraudful alienations, in prejudice of Creditors, and against the authors and partakers of such fraude; Statutes, ordaines, and declares, That in all actions, and causes depending, or to be intended by any true creditor, for recoverie of his just debt, or satisfaction of his lawful action and right: They will decreete and decerne, all alienations, dispositions, assignations, and translations whatsoever, made by the debtor, of any of his lands, teindes, reversions, actions, debtes, or goods whatsoever, to any conjunct or confident person, without true, just, and necessarie causes, and without a just price feally payed, the same beeing done after the contracting of lawful debts from true creditors: To have beene from the beginning, and to be in all times comming, Null, and of none avails, force, nor effect: at the instance of the true and just creditor, by way of action, exception, or reply: without further declarator. And in-case any of His Majesties good subjectes (no wayes partakers of the saids fraudes) have lawfully purchased any of the saids Bankrupts landes or goods, by true bargaines, for just and competent pryces, or in satisfaction of their lawful debts, from the interposed persons, trusted by the saids dyvours. In that case, the right lawfully acquired by him who is no-wayes partaker of the fraude, shall not be annulled in manner foressaid. But the receiver of the pryce of the saids lands, goods and others, from the buyer, shall be holden and oblished to make the same forth-comming to the behoove of the bankruptes trew creditors, in payment of their lawful debts. And it shall be sufficient probation of the fraud intended against the creditors, if they, or any of them, shall be able to verifie by writte, or by oath, of the partie receiver of any securitie from the dyvour or bankrupt, that the same was made without any true, just, and necessarie cause, or without any true and competent price: Or that the landes and goods of the dyvour and bankrupt beeing sold by him who bought them from the said dyvour, the whole, or the most part of the price thereof was converted, or to be converted to the bankruptes profite and use. Providing alwayes, that so much of the saids landes and goods, or prices thereof so trusted by bankrupts to interposed persons, as hath beene really payed, or assigned by them to any of the bankrupts lawful creditors, shall be allowed unto them,

they making the rest forth-coming to the remanent creditors, who want their due payments. And if in time comming any of the saids dyvours, or their interposed partakers of their fraude, shall make any voluntarie payment or right to any person, in defraude of the lawful, and more timely diligence of another creditor, having served Inhibition, or used horning, arreastment, comprizing, or other lawful meane, duely to affect the dyvours lands, or goods, or price thereof to his behoove. In that case the said dyvour, or interposed person, shall be holden to make the same forth-coming to the creditor, having used his first lawful diligence: who shall likewise bee preferred to the conc creditor, who beeing posterior unto him in diligence, hath obtained payment by the partial favour of the debtor, or of his interposed confident: and shall have good action to recover from the said creditor that which was voluntarily payed in defraude of the persuers diligence.

Finally, THE LORDS declares all such bankrupts, and dyvours, and all interposed persons, for covering or executing their frauds, and all others, who shall give counsel, and wilful assistance unto the saids bankrupts, in the devising and practising of their saids fraudes and godlesse deceits, to the prejudice of their true creditors, shall be reputed and holden dishonest, false and infamous persons, incapable of all honours, dignities, benefices, and offices: Or to passe upon inquestes, or Assyses: Or to beare witnesse in Judgement, or outwith in any times coming.<sup>231</sup>

20. *Act, ordaining Annual-rent to be due after Horning.*

OUR SOVERAIGNE LORD, and ESTATES of Parliament, considering the great prejudice which diverse of His Majesties Lieges sustaine by the want of their money, lent and given forth upon Band, or Contract, or otherwise justlie owing unto them, by their Debtors: who having used all Execution competent to them by Lawe, against their debtors, by charging, and putting of them to Horne: are forced, after many yeares, to receive their principal summe and penaltie, without any satisfaction of their annuel-rent, and interesse of their money in the meane time. Which as it is a prejudice unto the true Creditors; so it is ane occasion to the debtors to contemne His Majesties charges, and Letters of Horning: who resolves in end to pay no more for reliefe of the Horning, after many yeares delay, then they were oblised unto at the beginning.

FOR remeed whereof, His Majestie, with advice and consent of the Estates of Parliament, statuteth and ordaineth, That whensoever any person is denounced Rebel, and put to the Horne, for not payment of summes of money, owing by him, by band, contract, or otherwayes: That after the said denunciation, the said person so denounced, shall be subject in payment of Annuel-rent for the saids summes for the-which he is put to the Horne, and that of all yeares and tearmes from the date of the said denunciation, unto the time of payment of the same: and that notwithstanding there be no paction, nor condition of Annuelrent made betwixt the saids parties, which may binde the saide partie who is denounced rebel, unto the payment thereof. And such persons as are now standing rebels, and at the Horne, This Act shall not worke against them, (*quoad preterita*.) But shall have

<sup>231</sup> This act is one of the most important Scotch bankrupt statutes. Professor Bell gives a very full commentary upon the statute, and the cases which have been decided under it. See Bell's Com. vol. ii., and also cases under art. "Bankruptcy," in Mr Shaw's

strength and force against them in time comming, from the Feast of Martinmesse next in this instant yeare of GOD, one thousand, sixe hundreth, twentie and one yeares: and they shall begin to be subject in payment of annuel-rent at that time, and yearly and tearmly thereafter, until the payment of the principal summe.<sup>232</sup>

22. *Anent Counterfeiting, and making of false Writtes.*

FOR Eschewing the danger wherein many of his Majesties Lieges stand, by counterfeiting and falsifying of Evidents: IT IS statuted and Ordained, That whosoever maketh and useth a false Writ, or is accessory to the making thereof, shall be punished with the paines due unto committers of False-hood. AND it shall not be lawful for any person counterfeiter, falsifier, or accessory whatsoever, to declare in judgement, that he passeth from the Writ, quarrelled of False-hood. But if after the tryal, the Writ quarrelled be found false, the passing from, or declaration of the party, that he will not use the same, shal no wayes free him from the punishment which is due unto those who commit False-hood.<sup>233</sup>

27. *Anent Comprysing from apparent Heyres, extended as well unto Mens owne debts, as their Predecessors.*

OUR SOVERAIGNE LORD, and ESTATES of this present Parliament, Ratifies, approves, and confirms, the 106. Act of the seaventh Parliament of King JAMES the fifth, of worthy memory: Intituled [*The Creditor may pursue him, who is charged to enter, and entreth not,*] in all the Heads, Articles, and Clauses thereof. With the addition and explanation following: THAT the same shall be extended unto Debts owing by any person himselfe, as well as to those which are addebted by his predecessors. For the which debt, it shall be as lawful for a Creditor, to charge any person to enter Heir to his predecessor, and with the like certification, as if the predecessor had been debtor thereintil. Where-upon comprising may follow in manner specified, in the said Act.<sup>234</sup>

28. *Anent taking of Annuel-rent before hand, to be Usurie.*

OUR SOVERAIGNE LORD, and ESTATES of this present Parliament, considering, that notwithstanding Usurie, and taking unlawful Annuel, more than ten for each hundreth, hath been by sundry Actes of before discharged, and forbidden: Yet it hath been usual, by ane evill and corrupt custome, to take, or retaine, the Annuel-rent, the time of the borrowing the money: Which in effecte is eleven of each hundreth, at least. For Avoyding whereof, statutes, and ordains, That no person, who lendes, or gives out money, and receaves Annuel therefore, shall retaine the time of the lending, exact, crave, or receive, from their Debtors, the Annuel of their lent summes, until the tearme of payment appoynted by their Bandes, be first come. And it shall be lawful, at the time of lending of Money, and making of Bands, to adde the annuel unto the principal summe: providing alwayes, neither principal nor annuel be exacted, or craved, before the tearme of

<sup>232</sup> In reference to this act, see Erskine, b. iii. tit. iii. § 77. See also 1st & 2d Vict. ch. 114, § 10.

<sup>233</sup> In reference to this act, see Hume, vol. i. p. 137.

<sup>234</sup> In reference to this act, see Bell's Com. vol. i. p. 709, and Erak. b. ii. tit. xii. § 11. The act here extended is 1640, ch. 24, which see and note thereon.

payment appoynted to the said Band. And the contraveeners of this present statute shall be punished as unlawful Usurers.<sup>235</sup>

31. *Anent Hunting, and Haulking.*

OUR SOVERAIGNE LORD, And ESTATES of this present Parliament, statutes and ordaines, That no man Hunt nor Haulk at any time hereafter, who hath not a Plough of Land in Heritage, under the paine of ane hundreth pounds. ORDAINES His Majestie to have the one halfe of the penaltie of the Contraveeners of this present Act: and the Dilator to have the other halfe of the said penaltie.<sup>236</sup>

<sup>235</sup> See note to 1600, ch. 15.

<sup>236</sup> In reference to this act, see Erakine, b. ii. tit. vi. § 6, and Mr Ivory's notes along with the authorities there referred to.



ACTA PARLIAMENTORUM  
REGIS CAROLI PRIMI.

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The EDITOR has thought it right to include in the present publication, the following SUBMISSIONS and SURRENDERS of TEINDS, &c. with His MAJESTY'S DECREETS following thereon, in respect of the important connection which these documents have with the history of Tithes in Scotland. The proceedings involved in these Submissions and Decrees were ratified by Parliament in 1633.

SUBMISSIONS, AND SURRENDERS OF TEINDS, &c.

WITH

HIS MAJESTY'S DECREETS FOLLOWING THEREUPON.

1628.

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*Submission made be the Lords of Erections, Titulars, Tacks-men, & Gentrie, Heretours of Lands, To His Majesty, anent their Superiorities, and Teinds, &c.*

AT WHITE-HALL, The first day of Februar, And HALY-ROODHOVSE, The twenty third day of Februar, The year of God, One thousand, sex hundred, Twenty eight. The Persons under-written having or pretending right to whatsoever Erections, & Temporalities of Benefices, Superiorities, and Few-dewties of the same, or to the Kirks, and Teinds great and small, Parsonage, and Viccarage, or Patronages of Kirks pertaining to the saids Erections, or to any (teinds) which they, or any of them, have of other mens Lands, be whatsoever Right, or Title. And siclike, the Heretours, and Possessours of Lands, lyand within the saids Kirks, and Benefices, erected, for themselves, and in name of all Others, who are desirous to have Right and Title, of the Teinds of their own Lands, at a competent rate, and price, conform to His Majesties Proclamation made to that effect, THAT IS TO SAY, All the saids Persons, Considering, That his Majesty their Dread, and Gracious Sovereign, out of his Royal care, Fatherly, and tender affection, to the publick well of his Majesties Ancient, and Native Kingdom of Scotland, was lately

pleased in the Moneth of *Januar*, the year of God 1627. years, for the ease of his Majesties Subjects, and removing of the general fears which were conceived, by reason of his Majesties Revocation, given forth, and published in the Moneth of *October* 1625. years, To grant Commission under his Majesties great Seal, to certain his Majesties Commissioners nominat in the said Commission, to meet, convene, deale, and treat, anent such reasonable satisfaction, and composition, to be gevin to such of his Majesties Subjects, as had right to whatsoever erection of Benefices, Temporalities, Few-mails, Kirks, Teinds, and others foresaids, who should make surrender thereof in his Majesties hands, and anent the most convenient and lawful form how the saids Persons should be denuded of the Superiorities of the saids Erections, without any composition to be made therefore, except for the Few-mails, Few-farms, and other constant Rent of the saids Superiorities; And how lawful Dispositions should be made to the Heretours, and Possessours of Lands, of the Teinds of the saids lands pertaining to Erections, for such composition, and yearly dewties, to be payed, and refounded to His Sacred Majesty, as the saids Commissioners should think expedient. With power to the saids Commissioners, to consult, and agree, upon the establishing, and annexing, of a certain Patrimony to the Crown and means thereof, to remain with the Crown for ever; As the said Commission of the date foresaid, bearing certain Declarations, Reservations, and other Provisions in favours of his Majesties Subjects having right to Erections; And in favours of Heretours, and Possessours of Lands, for securing of the Teinds of the same, at more lenth is contained. BY VERTUE, and conform to the which Commission, the saids Commissioners having now convened, and treated anent the premisses, from the said Moneth of *Januar*, until the last day of *June*, last by-past: There was during that time a good progress made by them in the said business committed to their care, And by an Act of the date the Twenty ninth day of *May* last by-past, It was advised, concluded, and enacted, That His Majesty and His Successours, should have a constant, Rent and Dewty payed out of the whole Teinds of the said Kingdom consisting in victual, or silver, excepting the particular Teinds, excepted and reserved be the said Act, viz. Of every boll of the best Teind Wheat, *Tenshillings*, of every boll of best Teind Bear, *Eight shillings*, and of every Boll of the best Teind Oats, Pease, and Rye, *Six shillings*, and so the saids Rents to be modified out of the whole of the Teind bolls of victual, of the Teinds foresaids, being of inferiour worth, goodness, and, prices, according to the proportion of the saids Dewties, and Rent, laid, and imposed upon the best Boll of every kinde, in manner foresaid, And where Oates are of the nature, that they will not render above half meale, the rent to be *Three shillings*: And also of every *Hundred merks* of Parsonage, and Viccarage Teinds, which are not Victual, the sum of *Six merks* money, of yearly rent, and dewty: LIKEAS the saids Commissioners having entered upon consideration of the composition to have been given be his Sacred Majesty, for the Few-mails, and other certain rent depending upon the Superiority of the saids Erections, and for the Teinds, Parsonage, and Viccarage, pertaining to the saids Erections, and anent the rate, and price of the saids Teinds; THE SAIDS COMMISSIONERS be their Act of the date 29. day of *June*, last by-past, *Found*, that all Superiorities of Erections, should be freely resigned and surrendered, in his Majesties hands, without any composition. And because the saids Commissioners could not uniformly agree anent the composition to be payed for the Few-farms, Few-mails, and other constant Rent of the said Superiorities, nor yet anent

the true estimation, in the rate, quantity, and prices of the same, *Therefore*, be another Act of the date the 29. day of *May* last by-past, It was condescended that the determination thereof should be referred to his Sacred Majesty. AND all the saids persons acknowledging in all humility, his Majesties Royal and Princely care, providence, and wisdom, with his Fatherly and tender affection, tending to the removing of all these questions, and contraversies, and to the publick well, and good of the Kingdom: THEREFORE, All the saids Persons, have with one consent, and assent, of certain knowledge and proper motive, Ratified, and Approven of the said Act made be the saids Commissioners, anent the said constant Rent, and Dewty, to be payed to his Majesty, and His Successours, forth of the Rents of the Kingdom, except, as is excepted in the said Act, and with the quality, restrictions, and provisions, mentioned in the said Act, which is of date the 29. of *May* last by-past, Together with the said other Act made upon the said 29. of *June* last by-past: Whereby It is Ordained, That all Superiorities of Erections shall be freely resigned, and surrendered in his Majesties hands: Likeas the saids persons, and every one of them, for all Right, and Title, which they have, or may pretend to the Superiorities of whatsoever Lands pertaining to whatsoever Benefices erected, of whatsoever Title, name, or designation, the same be, Are content in all humility, promptitude, and alacrity of mind, To make surrender of the saids Superiorities, in manner after-mentioned. And therefore They, and every one of them, of certain knowledge, and proper motive, have made, constitute, and ordained, and be their presents makes, constituts, and Ordains, Master *William Elphinstoun*, Cup-bearer to his Majesty, and

Their Procuratours: With power to them, and ilk ane of them, conjunctly, and severally, to compare before their Gracious, and Dread Sovereign, his Sacred Majesty, and his Successours, or before their Commissioners, having power to receive Resignations, whatsoever day, and place convenient, and there, with all humility and reverence as becomes, To Resign, up-give, and Surrender, in the hands of their said Gracious, and Dread Sovereign, his Sacred Majesty, and his Successours, or in the hands of their Commissioners foresaid, *Ad perpetuam remanentiam*: Likeas they and every one of them, for their own right, for them, and their Successours, Resigns, and Surrenders in his Majesties hands, *Ad perpetuam remanentiam*, The Right and Title of Superiority, of all and sundrie Lands, Baronies, Milnes, Woods, Fishinga, Towers, Fortalices, Mannour-places, and other Pertinents, pertaining to whatsoever Erections, and Temporalities of Benefices, of whatsoever Title, name, or designation, the same be, to which, they, or any of them, have, or may pretend to have, or pretend right of Superiority, at the day and date of their presents, and which are holden of them, as Lords of Erection be

Reserving unto them, and every one of them, the Few-mails, and Few-ferms, of their said Superiorities, ay and while they receive payment, and satisfaction, of that which shall be ordained to be payed to them for the same, in manner after-mentioned. LIKEAS, It is expressly provided, and declared, that they shall use, bruick, and possess, the saids Few-mails, and Few-ferms, of the saids Superiorities, ay and while they receive payment, and satisfaction, of the composition which shall be ordained, and appointed to them, be vertue of the Submission after-mentioned, and that by vertue of their present Rights and Infeftments of the same; Notwithstanding of the surrender, and resignation above-specified, or any thing that shall follow thereupon. And als it is expressly declared, that under the Surrenders, and Resignations above-specified, shall no wayes be comprehended, the right of proper-



ty of whatsoever Lands, Barronies, Woods, Fishings, Manour-places, Milns, Mul-  
ters, and Others of the saids erected Benefices, pertaining to the saids Surrender-  
ers in property, and whereof they have had, or acquired the right of property of  
before, or since the saids Erections, be whatsoever manner of way, according to the  
Law of the Kingdom, To be holden of his Majesty, and His Successours, as the  
same were holden before the date of the saids Erections: And also reserving to  
them, the whole provisions, reservations, and other favours, and Benefices, granted,  
and reserved to them, be his Sacred Majesty, be vertue of the said Commission:  
*And specially*, but prejudice of the generality foresaid, Reserving the particular  
clauses following, whereby his Sacred Majesty hath declared, That it is not his  
Majesties intention, nor pleasure, to quarrel, and annull, any of the confirmed  
Fewes, or other lawfull Rights of any of the Lande, Temporalities of Benefices,  
formerly set be the Ancient Titulars thereof, without diminution of the Rentals,  
or Fewes granted be his Majesties late Father, to any of the Lords of Erection be-  
fore their Erections, without diminution of the Rentals, or Fewes bought *bona fide*,  
be any of the Lords of Erection, or by any other from them, before his Majesties  
late Revocation, from any Heretour thereof, without diminution of the Rentals, nor  
yet to quarrel, nor annull, any of the saids Fewes, set be the saids Lords of Erec-  
tion, before his Majesties late Revocation, to any of their own Vassals, without di-  
minution of the old rental. And whereby it is declared, That it is his Majesties  
special will and pleasure, That the Mansions, Circuits, Places, Orchards, and  
Gardens, of all the saids erected Benefices, shall be fewed unto such of the saids  
Lords of Erections as are in present actual possession thereof, without any other  
composition then a very small Few-dewtie, to be a testimony, that the same are  
holden of his Majesty immediatly. And also that such Demessuages, and other  
Messuages Lands, or other parts of the said Temporalities of Benefices, as were  
never of before set in Few, or Rental, by the Ancient Titulars before the Act of  
Annexation, nor by his Majesties dearest Father of Eternal, memory, since the  
said Act, and yet is presently possess be any of the saids Lords of Erections, *May*,  
and shall be fewed to the saids Lords of Erections, and to no others over their  
heads nor to their prejudice, and that for such reasonable Few-dewties, as the saids  
Commissioners shall appoint. And als that such Lands of the Temporalities of  
Benefices which are not erected, shall be Fewed to the present Possessours thereof,  
and to no others, for such a reasonable composition, and Few-dewties, as the saids  
Commissioners shall think fit, according to the validity and invalidity of their pre-  
sent Titles, which his Majesty is graciously pleased to amend to them, by all the  
lawful wayes, and means that shall be advised by the saids Commissioners. Which  
whole Infeftments, Rights, and Securities, his Majesty hath graciously promised  
to be ratified, and secured by Deliverance, Decreet, and Confirmation of Parlia-  
ment; As in the said Commission at more length is contained. *And also* it is  
specially provided, that the saids Persons, and every one of them, shall be no far-  
ther obliged in warrandice of the Resignation above-specified, but from their own  
proper fact, & deed allennerly. *And siclike* all the saids Persons have ratified  
and approven, and be thir presents Ratifies, and Approves the said Act made by  
the saids Commissioners upon the 29. of *June* last by-past, Where by the deter-  
mination of the Composition for Few-mails, with the quantity, rate, and price of  
Teinds, is referred to His Sacred Majesty. *And farther*, To the effect, that this  
general and great work intended for the security of every Heretour his own Teinds,  
may be brought to full perfection, All the saids Persons of certain knowledge, and

proper motive, have of new submitted, and by these presents submits, To his Majesty, to stand, & abide, at his Maj: Determination, and Decreet, anent what composition, and satisfaction, shall be given by his Majesty, to them, or any of them, for the Few-mails, Few-ferms, and other constant Rent of the saids Superiorities Resigned, and Surrendered be them, in his Majesties hands, as said is ; And doe freely, and absolutely by these presents submit to his Majesty, All and sundrie Teinds that they or any of them have of other Mens Lands, by whatsoever Right or Title, they possess or occupy the same : Submitting likewise to his Majesty, how they may be denuded thereof in his Majesties favours, *omni habili modo quo de jure* ; And doe in like manner submit to his Majesty to appoint the quantity, and rate thereof, and what price shall be given them for the same, and what securities shall be made there anent, They alwayes being freed, and releived of the burden of Ministers, *pro rata*. And because his Majesty will take specially into his Princely consideration, the lawful Rights, and Tacks of Teinds, of Erected Benefices, and of all Laik Patronages, made and set to the present Possessours, or their Authors, by Lawful Abbots, Priors, Laick Patrons, and other Titulars of Benefices, lawfully set before the date of the saids Erections, and for the space, and years of the saids Tacks, Rights, and Patronages yet to run, to the effect they may have plenarie and full satisfaction for the saids Tacks, Rights, and Patronages, according as his Majesty shall find the validity thereof, as is usual in the like cases, with the burden alwayes of his Majesties Annuity above mentioned, And to the effect his Majesty may be informed of their saids Tacks and Rights, before the giving forth of his Majesties determination in the premisses ; such of the Lords of Erection, and other Persons foresaids, as have such Rights, and Tacks, made, and set to them, or their Predecessours, or Authors, before the saids Erections, shall be oblidged to exhibit, Likeas they oblidge themselves, to exhibite, and produce the saids Rights and Writs, to his Majesties Advocats, at such diets, and times, as shall be Ordained by his Sacred Majesty, or his Majesties Chancellour, at his Majesties command, and direction, before the giving forth of his Majesties determination upon the premisses. AND ALSO, it is specially PROVIDED, that this present Submission, shall no wayes be extended, to the Teinds of whatsoever Lands, and Barronies, pertaining to the saids Persons Surrenderers in property, but that the Teinds of their own Lands shall be specially excepted out of this present Submission, the same being alwayes subject and lyable to his Majesties annuity foresaid. AND ALSO IT IS PROVIDED That this present Submission shall be no wayes prejudicial, to whatsoever action of Warrandice, competent to the saids Persons Submitters, or any of them, against their Authors, from whom they bought, and acquired the Rights of the saids Teinds, which falls with in the compass of this present Submission, be sums of money ; But that either their actions of Warandice, shall be reserved to them, conform to the tenour of the Rights made to them thereupon ; Or otherwise, that the satisfaction to be decerned in their favours, shall be answerable to their Warrandice, and no wayes inferiour thereto, The saids Persons, and so many of them as have their actions of Warrandice reserved to them in manner foresaid, exhibiting, and producing their saids Rights bearing the warrandice foresaid, To his Majesties Advocats, at such diets, and times, as shall be appointed, & prescribed to them by his Majesty, or by his Majesties Chancellour, at his Majesties command, and direction, before the giving forth of his Majesties determination in the premisses. And all the saids Persons are content and consents, That his Sacred Majesty give forth

his pleasure, and determination, anent the premisses referred to his Majesty, in manner foresaid, betwixt the day, and date hereof, and the first day of *August* next to come. With power also to his Majesty to prorogate the time of his giving forth of the said determination, to whatsoever, ever day or diet thereafter, as shall seem good to his Majesty, out of his Royal Wisdom. LIKEAS, all the saids Persons binds and oblidges them, their Heirs, and Successours, in all humility to fulfil, obtemper, and obey his Majesties said determination, They receiving lawful and perfect securities, conform to the tenour of his Majesties Commission foresaid; And also receiving real payment of that which shall be ordained be his Majesty, before they denude themselves, either of right or Possession, of the saids Few-mails, and Teinds, And that, at, or within such time or times, as his Majesty shall appoint, be his said determination. *And for the more security*, All the saids persons and every one of them are content, and consents, that thir presents, with his Majesties determination to follow thereupon, shall be Registrat in the books of Council and Session, and shall have the strength and force of a Decreet of the Lords thereof, with execution to pass thereupon, in form as effeirs: And the Horn-ing to pass on a simple charge of Ten dayes allennerly; And to that effect makes and constituts

Their procuratours to compear and consent to the Registration hereof in manner foresaid, *In Witness* whereof (written be *William Ferguson* Writer in *Edinburgh*) All the saids persons have subscribed thir presents, with their hands, Likeas his Sacred Majesty, in token of His gracious acceptation hereof hath subscribed the same with His Majesties hand, days, year, and places fore-said, before thir Witnesses, &c. *Sic subscribitur*; *Dupline, Lennox, Hamiltoun, Marr, Mareschal, Mortoun, Rothes, Menteith, Eglington*, for my self and my Son, *Nithsdale, Wintoun, Haddingtoun, Linlithgow, Buchan, Murray, Home, Roxburgh, Buccleugh, Lauderdale*, for my self and my Son, *Seaforth, Galloway, Annandale, Abercorne, Kellie, Aire, William Cuninghame, Boyd, Lindsay, Binning*, as Curator for my Lord *Lindsay*, Consents, *Balmerinoch, Couper, Haly-rood-house, Cranstoun, Carnegie, Loudoun, Spynie, Lindores, Gray, Thomas Bruce, Melvill*, for the Teinds of *Couper, Ochiltry, Traquair, Drumlangrig, John Stewart, Andrew Ker, Henrie Areskin*, Sir *John Hamiltoun, Annabel Countess of Lothian*, Curatrix to *Anna Ker*, Consents, Sir *George Elphinstoun, Colin Cambel*, Fiar of *Glenurquhie*, for my self, and taking Burden for my Father, and *Alexander Campbel* my Nephew, *Sempil* as Procuratour for my Lord *Sempil, Robert Innes* of that Ilk, *James Livingstoun*, Sir *Robert Gordoun, Master George Fletcher, Archibald Campbel, Robert Dalzel, James Carmichael, James Lockhart*, Sir *Alexander Gordoun, Patrick Home Strauchan, Hay, Lundie, George Bruce, James Bailie, Richard Balfour* of *Denmylne*, Master *Patrick Lindsay*, Sir *John Campbel* of *Calder*.

*Written on the back of the Submission above-written. Superscribed by his MAJESTY.*

CHARLES R.

*WEE CHARLES, By the grace of God, King of Great Britain, France, and Ireland; Defender of the Faith &c. Prorogats the Submission within written, with Our Decreet and Determination to be given be Vs thereupon, unto the last day of December 1629. years, Betwixt and the which day, or any time within the same, it shall be Lawful to Vs, to give forth Our Determination upon the said*

*Submission : And Wills and consents that this Prorogation be insert in the Books of Council and Session, ad futuram rei memoriam. And to that effect, makes and Constituts Our Procuratours, With Power to them, or any of them, to compear for Us before the Lords of Our Council and Session, and in Our Name to consent to the registration of this present Prorogation, In Witness whereof, We have Signed thir presents with Our hand, at Our Palace of White-hall, the 21 day of May, the year of God 1628. Before thir Witnesses, William Earl of Menteith President of Our Privy Council of SCOTLAND, Sir William Alexander of Menstrie Knight, Our Principal Secretary, Sir James Skeen of Curriehill Knight, President of Our College of Justice, Sir Archibald Atchison of Glencairn, also Our Secretary, and Sir Thomas Hope of Craighall Knight, Our Advocat, Master Alexander Burnet Servitour to the Advocat, Writter of the premisses.*

*At WHITE-HAL the 14 day of May 1628. years.*

THE WHICH DAY, In presence of me Notar Publick, and Witnesses under-written, Master *William Elphinstoun* Cup-bearer to his Majesty, as Procuratour for the Constituents within-written, Compeared in presence of his Sacred Majesty, and in all Humility, and upon his Knees, Resigned, and Surrendered in his Majesties hands, *Ad perpetuam remanentiam*, the Right, and Title of Superiority, of all and sundry Lands, Baronies, Milnes, Woods, Fishings, Towers, Fortalices, Mannour-places, and other Pertinents, pertaining to whatsoever Erections, and Temporalities of Benefices, of whatsoever Name or Designation the same be of, To the which the Constituents, or any of them within-written, have, or may pretend right of Superiority, and which are holden of them, as Lords of Erections, be whatsoever his Majesties Subjects, Reserving, and under the Provisions, and Reservations within specified. WHICH RESIGNATION, his Majesty accepted with a special *Proviso*, that the same should be without prejudice of His Majesties Rights, to the said Superiorities, and that the Acception hereof shall not import a grant or acknowledgment, of any right, or Title, of the saids Superiorities in the Persons of the saids Resigners, *sed accumulando jura jurisbus*. WHEREUPON Sir *Thomas Hope of Craighal* Advocat to his Majesty, in his Majesties name asked Instruments of me *Notar Publick* under subscribing. This was done within the said Palace of *Whitehal*, within his Majesties withdrawing Chamber, the same Day, Place, and Year foresaid, betwixt Eleven and Twelve houres before Noone, Before thir Witnesses, *George Duke of Buckingham*, Sir *James Fullartoun*, Gentlemen of His Majesties Bed-Chamber, Sir *William Alexander of Menstrie* Knight, Principal Secretary, Sir *Archibald Atchison* of *Glencairn* Knight, also Secretary to His Majesty, Sir *George Elphinstoun* of *Blythwood* Knight, Justice-Clerk, Witnesses required, and Desired to the Premisses, *Sic subscribitur Ita est Jacobus Phillip Notarius Publicus ad premissa requisitus, Testan meis Signo, et Subscriptionem manualibus, &c.*

*Submission made be the Bishops and Clergie of SCOTLAND, To his Majesty,  
Anent the Rights of Teinds.*

AT The Day of One Thousand,  
six Hundred Twenty eight years Wee the *Arch-Bishops*, and *Bishops*, and remanent Clergie within the Kingdom of *Scotland* under Subscribing, Considering that His Sacred Majesty, Our Dread Sovereign, out of His Royal Care, Fatherly and tender affection to the Publick good of all his Majesties Subjects of His said Kingdom, for freeing them from the extremitie of damage, which may ensue to them, by leading of their Teinds, Intends to take such course as hereafter every

Heretour may possess, and enjoy the Teinds of his own Lands, for payment of a reasonable Rate, and Dewty for the same; And Wee acknowledging our selves to be bound in Dewty for the advancement of that his Majesties Royal design, tending to the Publick good of the Commonwealth. And being most willing that such Heretours as are subject to the payment of any Teinds to Us, or any of Us, may have their own, being desirous thereof, for payment to Us, and our Successours, of such a reasonable rate, and constant yearly Rent, as his Majesty shall determine to be the *Quota*, and Rates of the Teinds, within the rest of the Kingdom, so as the Rent and Dewty, in Silver, and Bols payed at the present, as well to Us, as to the Ministers serving at our particular Churches, be not in any sort hurt, or diminished. And also considering the great benefite, which the said course intended be His Majesty, may Import to Us and our Successours, who are thereby to have a certain, and yearly Rent, which may not be altered by any Titulars in prejudice of their Successours. THEREFORE to be bound and oblidge, Likeas Wee Bind and Oblidge Us, and Our Successours, to grant to every Heretour of the several Lands, the Teinds whereof doe appertain to us, or any of us (being desirous of the same) such sufficient security thereof, as may stand with the Laws of the Kingdom, and for such a reasonable Rate and Rent, or rental Bols as his Majesty shall determine to be the *Quota*, and Rate of the Teinds: Submitting our selves hereby, to his Majesties Royal Decreet, and Sentence to be pronounced at, or before the last Day of *December*, in the year of God 1629. And anent what lawful security in manner foresaid, shall be made, and given by Us, or any of Us, to the saids Heretours of their own Teinds, belonging to Our Bishopricks, or Benefices, for payment to be made, be the saids Heretours, to Us, and Our Successours of the said *Quota*, and Rate, or constant Rent, and Rental, to be set down be his Majesty, for the saids Teinds, out of the saids Lands subject in payment thereof yearly, in such manner, and at such terms, as his Majesty shall be pleased to appoint: And anent the making, setting down, and establishing of the said *Quota*, and Rate of the saids Teinds, Rental, or Rental-Bols, payable yearly, for the same to Us, and Our Successours; And anent what Security the saids Heretours shall make, for the sure, true, timeous, and thankful payment to Us, and Our Successours, of the said yearly Rent, and Rental Bols, at such Times, and Terms of payment, as his Majesty shall think fit to be contained in the security of the said Teinds: And Anent the Annuity hereafter payable, be the saids Heretours, for encrease of his Majesties Rent, *Providing* that Wee, and every one of Us, enjoy the Fruit, and Rent, of Our several Benefices, as they are Possess by Us, at this present time, and that the same be not hurt, nor diminished, neither in quantity, nor quality, whether the same be payed to Us, in Rental-Bols, or by gathering of the Teind-sheaves; But that Wee, and our Ministers, provided to the particular Churches under us, and our, and their Successours, may freely enjoy the same, without any alteration, and that such Rent as shall hereafter belong, and accresce to us, and any of us, and our Successours, by his Majesties said Decreet, anent the said *Quota* to be payed be the saids Heretours, for the remanent of the Teinds, which are not in our present possession, be secured and made sure to Us, and Our Successours, leaving the saids Heretours of the Lands, out of which the Teinds are due unto Us, To submit themselves to his Sacred Majesty his Decreet and Determination, anent the Annuitie, and other Premisses which concern them, to be pronounced before the said last day of *December* 1629. AND for the more security, Wee, and every one of Us, are content, and consents, that thir presents be Insert and Registrat, Together with his Majesties Determination to follow thereupon, in the Books of Council, and Session of *Scotland*, to have the strength of a Decreet of the Lords thereof Interponed thereto, and that all Letters.

and Execution needful may pass hereupon, in form as effeirs; and the Horning to pass on a simple charge of Ten dayes only: And for Registrating hereof, and determination foresaid to follow hereupon as said is, Makes and Constituts

Conjunctly and severally, Our lawful Procurators, *Promitten de rato*, In Witness whereof (Written be *John Law* Servitour to the Right Reverend Father in God *John Archbishop* of *St Andrewes*) We have Subscribed thir presents, with Our Hands, Day, Moneth, Year, and Place foresaids, Before thir Witnesses &c. *Sic Subscribitur*, Bishop *St. Andrewes*, B. *Dunkeld*, James B. *Glasgow*, P. *Aberdeen*, J. B. *Caithness*, John B. *Murray*, Pat. B. *Ross*, John Ep. *Sodorensis*, David B. *Brechin*, And. B. *Dumblane*, And B. *Galloway*, And. *Lesmorensis*, Geo: *Orcaden*. J. *Primerose*, Witness, Master James Law Witness to the Bishop of *Galloway* his Subscription.

*Submission made be the Burrowes, To his Majesty, Anent their Teinds.*

AT PERTH, The Second Day of July 1628. years, Wee the Commissioners of the Free Royal *Burrowes* of *Scotland*, under-Subscribing, having full Power, and Commission, from Our several Burghs under-written, for their Right to the Teinds, great, and small, Parsonage, and Viccarage, of all, and whatsoever Benefices, doted be his Majesties most Royal Progenitours, be Vertue of the Acts of Parliament, and Securities made to them, and ilk one of them, for their own parts *respective*, for Sustentation of the Ministrie, Colledges, Schools, and Hospitals, of the several Burghs under-specified, to the effect after-mentioned. CONSIDERING, That his Sacred Majesty, Our Dread Sovereign, Out of his Fatherly, and tender affection, and Royal care to the publick good of all his Majesties Subjects, of his Majesties Native, and Ancient Kingdom of *Scotland*, for freeing them from the extremity, and damage, which may ensue to them, by leading of their Teinds, Intends to take such course, as hereafter ilk Man may possess and enjoy the Teinds of the Lands pertaining to him in property. AND Wee acknowledging our sels to be bound in dewty, to the advancement of all his Majesties Royal designs, tending to so publick a good; THEREFORE to be Bound, and Oblidged, Likeas Wee, and ilk ane of Us for our own Burghs *respective* under-written, Binds, and Oblidges Us, and Our Successours, to grant unto the Heretours of the several Lands, whereof the Teinds doth to Us appertain, after the expiring of the present Tacks already granted be Us, to the present Tacks-men, such Rights, and Securities, for perpetual enjoying of their own Teinds, and for payment of such Rates, and Teind Rental, and Teind Bolls of Victual, as his Majesty in His Royall Judgment shall decern; Wee Submitting our selves, ilk ane of us for our own parts hereanent, To his Majesties Royall Decreet, and Sentence, and what shall be the true Rate, Estimation, and Quantity of the saids Teinds, and what Security shall be made to Us, be the saids Heretours, for yearly payment to be made to Us, ilk ane of Us for our own parts, of the saids Teind-Bolls of Victual, of such sorts, as shall grow upon the same Lands yearly, as shall be decerned by his Majesty, betwixt *Zuile* and *Candlemes*, for payment whereof, the same Lands shall be lyable, and bound in security for the same. And are content, and consents, ilk ane of Us, for our own parts, That his Sacred Majesty give forth his pleasure, and determination, anent the premisses, Referred to his Majesty in manner foresaid, betwixt the day, and date hereof, and the last day of *December*, in the year of God 1629, as shall seem good to his Majesty. With power also to his Majesty, to prorogat the time of the giving forth of his said determination, to whatsoever day, or dayes thereafter, as shall seem good to his Majesty, out of his Royall Wisdom, And farther Binds, and Oblidges Us, and Our Successours, ilk ane of Us for our own parts, and Burghs, *respective* under-written, In case it shall

be found, that the Rents of the Teinds, great, or small, Victual, or Silver Dewty of the same, doted for Satisfaction of the Ministers, Rectors, and Regents of Our Colledges, Masters of Our Schools, and Poor of Our Hospitals of Our several Burghs, payed to Us, shall exceed the several Sums of Money expended be Us, for the fore-said Pious Uses, and their entertainment in the Stipends of the saids Ministers, Rectors, Regents of Our Colledges, Masters of Our Schools, and of Our Poor, and of Our saids Hospitals, then, and in that case, to pay yearly to his Majesty, and his Collectours, ilk ane of them for their own parts, forth of the super-plus and ex-cresce of the saids dewties remaining, by and attour the payment of the Stipends of the saids Ministers, Rectors, and Regents of our saids Colledges, Masters of Our Schools, and entertainment of the Poor in our saids Hospitals, out of ilk Boll of best Wheat, *Ten shillings*, and out of ilk Boll of best Bear, *Eight shillings*, And out of ilk boll of best Oats, Pease, and Meale, *Six shillings*, and the said Rent to be Modified out of the whole Rest of the Teind Bols of Victual of these Teinds foresaid, being of inferiour worth, goodness, and prices, According to the propor-tion of the said dewty, and rent, laid, and imposed upon the best Boll of every kind in manner foresaid. And where Oats are of the Nature that they will not render above halfe Meale, the Rent to be *Three shillings*, And of every *Hundred Merks* of Personage, and Viccarage Teinds, which are not of Victual, the Sum of *Six Merks* money, of yearly Rent, and Dewty. AND FOR the more Security, Wee are content, and consents, that thir presents, with his Majesties determina-tion to follow hereupon, shall be Insert, and Registrat in the Books of Council, and Session, and shall have the Strength of a decret of the Lords thereof, with Exe-cution to follow thereupon, in form as effeirs, And the Horning to pass thereupon, On a simple Charge of Ten Dayes allennerly: And to that effect, Makes and Constituts

Our Procurators, To Compear, and Consent to the Registration hereof in manner foresaid. *In Witness whereof* (Written be *James Phillip* Servitour to Master *John Hay* Common Clerk of *Edin-burgh*) Wee the Commissioners of the Burghs undes-written, have subscribed thir presents with Our Hands: Likeas his Sacred Majesty, in token of his accep-tation hereof, hath Superscribed the same with his Majesties Hand, Day, Year, and Place foresaid, Before thir *Witnesses*, *George Sutie*, *Patrick Elais*, and *John Tod*, Burgesses of the said-Burgh of *Edinburgh*, and *Alexander Menauight*, Writ-ter, with diverse others. *Sic Subscribitur*, *Alex: Peebles* Moderatour, *John Mcnaught* for *Edinburgh*, *Tho: Weir* for *Edinburgh*, *And: Wilson* for *Perth*, *Thomas Halyburtoun* for *Dundee*, *Master Alexander Forbess* for *Aberdeen*, *Alex: Cowan* for *Stirling*, *Will: Bell* for *Linlithgow*, *Simeon Greg* for *St. Andrews*, *Gabriel Cuninghame* for *Glasgow*, *John Knight* for *Aire*, *Mr James Cockburn* for *Haddingtoun*, *David Christison* for *Dysert*, *Alex: Law* for *Kirkaldie*, *John Jar-dine* for *Montross*, *Rob: Pearson* for *Couper*, *Henry Moreis* for *Anstruther*, *John Irving* for *Dumfreis*, *Duncan Forbess* for *Innerness*, *Will: Meiklejohn* for *Brunt-island*, *Mr Rob: Cuninghame* for *Kinghorn*, *Allan Dunlap* for *Irwing*, *Mr John Rutherford* for *Jedburgh*, *John Ewart* for *Kircudburgh*, *Pat: Edgar* for *Wig-toun*, *Mr Thomas Wardlaw* for *Dumfermling*, *Mr John Ker* for *Selkirk*, *Geo: Purvess* for *Dumbar*, *Mr Ja: Pearson* for *Arbroth*, *Alexander Muir* for *Peebles*, *David Watson* for *Dumbartoun*, *Gideon Jack* for *Lanerk*, *Tho: Cuninghame* for *Carraill*, *David Forrest* for *Rayne*, *Mr Edward Black* for *Culross*, *Andrew Hunter* for *Forfar*, *John Thomson* for *Rutherglen*, *John Meinzie* for *Northber-wick*, *George King younger* for *Pettinweym*. *Ita est Magister Alexander Guthrie* *Scriba Burgorum*, *Regni Scotiæ Notarius Publicus*, in præmissis requisitus, no-mine reliquorum Burgorum, de speciali mandato reliquorum Commissionariorum; *Testan his meis Signo, & Subscriptionibus Manualibus*, *Mr Alexander Guthrie*, *George*

*Sutie Witness, Patrick Elies Witness, John Tod Witness, and Alexander Mcnaught Witness.*

*Submission made to His Majesty, be certain Tacksmen, and Others having Right to Teinds, &c.*

Ar the Eighteenth day of 1628. The Persons under-written, having, or pretending a right, by whatsoever Title, Tack, or other manner of right, to whatsoever Teinds of other Mens Lands pertaining to whatsoever Bishoprick, Abbacie, Priory, Parsonage, Viccarage, Colledge-Kirks, Prebendry, Chaplainry, or other Benefices whatsoever. And siclike, the Heretours, and Possessours, of whatsoever Lands lying within the saids Benefices, and who are desirous to have the Teinds of their own proper Lands pertaining to the saids Benefices, at a competent rate, and price, conform to his Majesties gracious intention, declared, and signified for the well of the Kingdom: And conform to his Majesties many, and several Proclamations made thereanent, THAT IS TO SAY, The saids Persons *Considering* that his Majesty, their Dread and Gracious Sovereign, out of his Royal care, Fatherly, and tender affection to the publick well of his Native, and most Ancient Kingdom of *Scotland*, was lately pleased in the Moneth of *Januar* 1627. Years, for the ease of his Majesties Subjects, and removing the general fear which was conceived be reason of his Majesties Revocation, given forth, and published, in the Moneth of *October*, 1625. years, to grant Commission under his Majesties Great Seal, to certain his Majesties Commissioners, nominat in the said Commission, to Meet, Conveen, Deale, and Treat, anent such reasonable Composition, and Satisfaction, to be given to such of his Majesties Subjects, as had Right to whatsoever Erections of Benefices, Temporalities, Few-mails, Kirks, Teinds, and Others pertaining thereto, and how lawfull Disposition may be made to the Heretours, and Possessours of Lands, of the Teinds of their saids Lands, for such Composition, and yearly Dewty, to be payed, and Reserved to his Sacred Majesty, as the saids Commissioners should think fit, and expedient: As in the said Commission of the Date foresaid, bearing certain Declarations, Restrictions, and other Provisions, in favours of his Majesties Subjects having Right to Erections, and in favours of Heretours, and Possessours of Lands, for Security of their Teinds, at more length is contained. BE VERTUE, and CONFORM to the which Commission, the saids Commissioners having Conveened, and Treated anent the Premises, from the said Moneth of *Januar*, to the last of *June* 1627. years, There was during that time, a great progress made be them, in the said business committed to their care, And be an Act of the 29 of *May* 1627. years, It was Advised, Enacted, and Concluded, That his Majesty, and his Successours, should have a constant Rent, and Dewty, payed out of the whole Teinds of the said Kingdom, consisting in Victual, or Silver, Except the particular Teinds excepted, and reserved be the said Act, Likeas the saids Commissioners having entered upon consideration of the Rate, and Price of Teinds, found such difficulties, as they could not uniformly agree upon the true Estimation of the saids Teinds, in the Rate, Quality, and Prices thereof; And Therefore be ane Act of the Date of the said 29 Day of *June* 1627. years, Condescended that the determination thereof should be referred to his Sacred Majesty, As the saids Acts of the Dates foresaid, in themselves at more length proportis. And all the saids Persons acknowledging in all Humility, his Majesties Royall, and Princely Care, Providence, and Wisdom, with his Fatherly, and tender Affection, Tending to the removing of all questions, and controversies, to the publick well, and good of the Kingdom. THEREFORE All the saids Persons, with one consent, and assent, of certain Knowledge, and proper Motive, have Ratified, and Approven the said Act made be the saids Commissioners, anent the said constant Rent, and Dewty, to be payed



to his Majesty, and his Successours, forth of the Teinds of the Kingdom, Except as is excepted in the said Act, and with the qualities, restrictions, and provisions mentioned in the said Act, which is of the date the said 29. of *May* 1627. years, Together with the said other Act, made upon the said 29. Day of *June* 1627. Years, whereby the Determination of the rates, quality, and prices, of Teinds of other Men's Lands is referred to his Sacred Majesty. AND FOR SAMEIKLE as there was a General Submission drawn up concerning the premisses, which was subscribed be the most part of the Titulars, and Heretours of the Kingdom, And that a few number deferred to subscribe the saids Submissions, upon pretence that the Arch-Bishops, Bishops, Parsons, Vicars, and others of the Clergy of the Kingdom who had Right to the Teinds, had not subscribed the saids submissions, which Impediment is now removed, in respect the Arch-Bishops, and Bishops, have subscribed a several submission to his Majesty, In so farre as concerns the Teinds pertaining to the Bishopriks. AND his Majesty being willing, and resolved, to have ane universal order established within the whole Kingdom, anent the matter of Teinds, and that every Heretour shall have, and bruick his own Teinds, of whatsoever nature the said Teinds be, and to whatsoever Benefice the same pertains, at a competent Rate, and Price, THEREFORE his Majesty be his Letter, and Warrant, direct to the Commissioners for Teinds, of the date the day of last by-past, hath signified his Majesties Gracious will and pleasure; That all Titulars of Teinds, pertaining to whatsoever Kirk, or Benefice, and als all Heretours of Lands, the Teinds whereof pertains to the said Benefices, or Kirk shall subscribe a general submission to his Majesty in referring to his Majesty the price, rate, and quantity of whatsoever Teinds, of other Men's Lands: WHICH Letter being read, and considered be the saids Commissioners for Teinds, They be their Act of the date the day of *December* last bypast, have in all humility acknowledged his Majesties Gracious, and Fatherly Care, for the Good of his Ancient Kingdom, and have allowed, and approven the said Letter, and Interponed their authority thereto. And all the saids Persons being most ready, and willing, in all humility, submission, Promptitude, and Alacrity of Mind, to give obedience to his Majesties desire for the Publick well of the Kingdom. THEREFORE They all of certain knowledge, and proper motive, have submitted to his Sacred Majesty, All and sundrie Teinds, that they, or any of them have of other mens Lands, be whatsoever Right, or Title, they possess, or enjoy the same, and how they may be denuded *Omni habili modo quo de jure*, And in like manner do submit to his Majesty, to appoint the rate, and quantity of Teinds, and what prices shall be given for the same, and what security shall be made of the Teinds of other Mens Lands, to the Heretours, and Possessours thereof, in such form as may stand by Law: And all the saids Persons are content, and consents, that his Sacred Majesty give forth his pleasure, and Determination, anent the premisses refered to his Majesty in manner foresaid, betwixt the day, and date hereof, and the last day of *December* 1629. years: With power also to his Majesty to prorogat the time of the giving forth of his said Determination, to whatsoever day, or dayes thereafter, as shall seem good to his Majesty, out of his Royall Wisdom. Likeas all the saids Persons, Binds, and Oblidges them, their Heirs, and Successours, in all Humility to obtemper, fulfill, and obey, his Majesties said Determination, they receiving perfect, and Lawful securities, conform to the Tenour of his Majesties Commission foresaid, and als receiving real payment of that which shall be Ordained by his Majesty, before they denude themselves, either of Right, or Possession of the saids Teinds, and that, at, or within such time, or times as his Majesty shall appoint, be his said Determination. AND for the more security, all the saids Persons, and every one of them, are content.

and consents, that thir presents, with his Majesties Determination to follow here-upon, shall be insert, and Registrat in the Books of Council, and Session, and shall have the strength of a Decreet of the Lords thereof, and Execution to pass there-upon, in form as effeirs, and the Horning to pass on a simple charge of Ten dayes allennerly, And to that effect makes, and Constituts

Their Procuratours to compear, and consent to the Registration thereof, in manner fore said. *In Witness* whereof (Written be *William Ferguson* Writer,) All the saids persons have Subscribed thir presents, with their hands, day, year, and place foresaid, Before thir Witnesses &c. *Sic Subscribitur, Ja.*

of *Lawes, John Buchanan* Portioner of *Batlassie, Ita est Walterus Watson Notarius Publicus in præmissis requisitis, de mandato dicti Jacobi Buntein de Kirkcoun, scribere nescien, ut asseruit, & hunc Calamum meum tangen, Teste manu propria. Ita est Robertus Glen Connotarius in præmissis requisitus, de speciali mandato dicti Jacobi Buntein de Kirkcoun Scribere nescien, ut asseruit, Teste manu propria.*

### A PROCLAMATION

*By his Majesty, For Publishing his Majesties Decrees upon the Submissions foresaid.*

**CHARLES** By the grace of God, King of Great Britain, France, and Ireland, Defender of the Faith, To Our Lovits, Lyon King at Armes, and his Brethren *Heralds, Messengers, Our Shirreffs* in that part, conjunctly, and severally, specially constitute, greeting, **FOR SAMEIKLE**, As Wee having now after good Advice, and Deliberation, pronounced, and given forth Our Royal Decreet, Sentence, and Determination, in the matters referred, and submitted unto Us, by the General Submissions made by the Arch-Bishops, and Bishops, Lords of Erections, Patrons of Kirks, and Benefices, Titulars of Teinds, and Heretours of the Lands out of which Teinds are payed, and by Our Burrowes, and Others Our subjects, particularly expressed in the saids Submissions, as in the four several Decrees following, pronounced by Us in these matters, at length is contained. **AND** Wee finding it necessary, and expedient for the good of Our subjects, that Publication, and Intimation should be made of Our saids Decrees, to the intent that Our subjects being acquainted with the Tenour, and substance of the same, they may be the better prepared and resolved, to obtemper, & obey the same. Wee therefore Recommended to the Lords of Our Privy Council, the Publication of Our saids Decrees, which Decrees being exhibit unto Our said Council, and Read in their Audience, upon the Eighteenth day of *September* instant, and they in all dewtiful Obedience, acquiescing to Our Royal Direction anent the Publication of Our saids Decrees: Therefore they have Ordained, and Ordains, the saids Decrees to be Published at the Mercat-Crosses of the Head Burrowes of this Our Kingdom, and hath Ordained these Our Letters to be direct for that effect, as an Act made thereupon bears, **OUR WILL IS** Herefore, and We Charge you straitly, and Commands, that incontinent these Our Letters seen you pass to the Mercat Cross of *Edinburgh* and to the remanent Mercat Crosses of the head Burrowes of this Our Kingdom, and there by open Proclamation, in Our Name, and Authority make Publication, and Intimation of Our saids Decrees, To all, and sundry Our Lieges, and Subjects, wherethrough none pretend ignorance of the same: As you will answer to Us thereupon: The which to doe, Wee commit to you conjunctly, and severally, Our full power by these Our Letters, delivering the same by you duely Execut, and Indorsed again to the Bearer.

*GIVEN under Our Signet, at Holy-rude-house, the Eighteenth Day of September, and of Our Reigne the fifth Year 1629.*

*Per Actum Dominorum Secreti Concilij.*

## HIS MAJESTIES DETERMINATION

*Upon the first General Submissions.*

## CHARLES R.

CHARLES, By the grace of God King of Great Britain, France, and Ireland, Defender of the Faith. To all and sundry Our Subjects whom it effeirs. FOR SAMEIKLE as by the general Submissions made to Us, by all and sundry persons, having, or pretending Right to whatsoever Erections, and Temporalities of Benefices, Superiorities, and Few-dewties of the same, or to the Kirks, and Teinds, great, and small, Parsonages, and Vicarages, or to Patronages of Kirks pertaining to Erections, or to any Teinds, which they, or any of them have of Other Mens Lands, by whatsoever Right or Title: And als by the Heretours, and Possessours of Lands lying within the saids Kirks, and Benefices erected, for themselves, and in name of all Others, who were desirous to have the Right, and Title of the Teinds of their own Lands, at a competent rate, and price, conform to Our gracious Proclamations made to that effect; The saids Persons Subscribers of the saids general Submissions did submit themselves to Us; And are bound to stand, and abide, at Our determination, & decreet, anent what composition, and satisfaction shall be made, and given by Us, to them, or any of them: for the Few-mails, Few-ferms, and other constant Rent of the superiorities, of whatsoever Lands, Barronies, Mynes, Woods, Fishings, Towers, Fortlices, Manour-places, and their pertinents, pertaining to whatsoever Erections, and Temporalities of Benefices, of whatsoever title, name, or designation, the same be, resigned, and surrendered by them in Our hands: And als did freely, and absolutely submit to Us, all and sundry Teinds, that they, or any of them have of Other mens Lands, by whatsoever Right, or Title, they possess, & enjoy the same: And how they may be denuded thereof in Our favours, *Omni habili modo quo de jure*: and als submitted to Us, to appoint the rate, and quantity of the saids Teinds, & what price should be given to them for the same, and what securities should be made thereanent, they alwayes being liberat of the burden of the Ministers Stipends *Pro rata*; As in the saids general Submissions, containing diverse other Heads, and Articles, and bearing full power to Us to pronounce Our determination in the premisses, and als to Prorogat the time of giving forth of Our said determination, betwixt and the first day of *August* then next to come, and now by-gone, to whatsoever day, or dayes thereafter, at more length is contained. And Wee Having called up to Us a number of Our Nobility, Privy Council, and Others, able, expert, and well affected, to give their Advice to Us, in a matter of so great Importance, in the Moneths of *April*, and *May* 1628. years, with whom Wee had diverse meetings and conferences: and heard, and considered, the Reasons, and Arguments of all Parties having interest, with their Opinions, and Judgments thereanent. And in respect of the consequence of the business, Wee took the same to Our farther consideration, and in the meane time Prorogat Our determination to be given upon the saids Submissions, till the last day of *December* 1629. years, betwixt and the which time, Wee Declared that Wee would give forth Our Royal determination in the matters submitted to Us, by the saids general Submissions: AND NOW Wee being well, and ripely advised therein, and tendering the Well, and Plantation of the Kirks, with the Peace, and Quietness of that Our Ancient Kingdom, PRONOUNCE Our Sentence, and Determination as followes. IN THE FIRST, as to the composition to be given by Us, for the Few-mails, Few-ferms, and other constant Rent of the saids Superiorities, Wee Find, and Decern the sum of *One Thousand merks Scots* money to be a competent, and reasonable satisfaction, to be payed for each *Chalder* of Few-ferms Victual over-head, and for each *Hundred merks*

money of few maillis and for ilk hundreth merks worth of all other constant Rent, of the said Superiorities (not consisting in Victual, or Money, and not being naked service of Vassals) the same being valued, and redacted in Moneys by Our Commissioners after-specified : Deducing alwayes of the saids Few-ferms, Few-mails, and other constant Rent foresaid, the Blench dewties contained in the Infestments of Erections made to the saids Submitters, or to their Authours : For the which *Wee find* that Wee ought, nor should give no satisfaction, in respect the same pertains to Us, as Our proper Rent, by their saids Infestments of Erections. *And because* It is not constant what is the true Rental, and quantity of the saids Few-ferms, Few-mails, & other constant Rent of the saids Superiorities & what part thereof pertains to every particular Person, and what is free deducing the saids Blench-dewties, without the which were tryed, and known, there can be no payment made to them of the said composition, and satisfaction ; THEREFORE Wee Ordain the saids Lords of Erections, and all others having right to any part of the saids Few-ferms, Few-mails, and other constant Rent foresaid of the saids Superiorities, to give in the just Rental of the saids Few-ferms, Few-mails, and other constant Rent of the saids Superiorities, and what part thereof pertains to every particular Person heretably in Life-rent, or otherwise ; and what part thereof is presently payed, or hath been payed to them, or any of them, having, or pretending right thereto, of the years preceeding the decease of Our Unquihle dearest Father of Eternal memory, and sensyne ; and what is free thereof deducing the saids Blench-dewties before Our Commissioners nominat, or to be nominat by Us to that effect, at such dayes, and times as they shall be required thereto : And to subscribe the saids Rentals with their hands, and therein to be bound to Warrant the saids Rentals to be just Rentals thereof, from their own deed ; and that the same hath been payed these Seven years immediatly by-gone, at the least payable by lawful Fewes set before the Act of Annexation : And that the same is not burdened with any pension, nor Liferent, nor other right flowing from them, their Authours, or Predecessours, since the date of their Erections, which may prejudice Our present Intromission therewith : Which being done, and the saids Rentals tryed, allowed, and approven, by Our saids Commissioners, DECERNS, and ORDAINS, Our Thesaurer, Thesaurer-depute, and Receivers of Our Rents present, & to come to make a good & thankful payment to them, and every one of them, according to the saids Rentals, to be tryed by Our saids Commissioners, of the said sum of an *Thousand merks*, for each *Chalder* of Few-ferms, & for each *Hundred merks* of Few-mails, and for each *Hundred merks* worth of all other constant Rent foresaid, of the saids Superiorities being valued, and redacted in Moneys by Our saids Commissioners, deducing the saids Blench-dewties as said is, and that within the space of a Moneth thereafter, with this special provision and declaration : That in case Our said Thesaurer-Principal, Thesaurer-Deput, and Receiverers, failzie in payment, that then, and in that case, the saids Lords of Erections, and other Persons foresaid, having right to the saids Few-ferms, Few-mails, and other constant Rent foresaid of the saids superiorities, shall have good right to meddle, and intromet with the saids Few-ferms, Few-mails, and other constant Rent foresaid, of all years, and terms thereafter, ay and while the saids sums be really payed, and satisfied to them, and als with this provision, that if it shall happen any of the saids Lords of Erection, or any others having, or pretending right to the saids Few-ferms, Few-mails, and other constant Rent foresaid to failzie in compearing before the saids Lords Commissioners, and giving up of the true Rentals thereof, in manner above-designed, at the diets, and times to be assigned to them ; That then, and in that case, it shall be lawful to Us, and Our Thesaurers, and Receivers, to intromet with the saids Few-ferms, Few-mails, and other constant Rent of the saids Superiorities, they alwayes

being acted, and bound before Our saids Commissioners, appointed, or to be appointed by Us, to pay to the Person sua failzie and the said price, and composition of an *Thousand merks* money for each *Chalder*, or *Hundred merks* of the saids Few-ferms, Few-mails, and other constant Rent foresaid: And that within the space of a Moneth after they shall give up a just, and true Rental, in manner, and with Warrantice above-exprest, and that the same shall be tryed, and found by Our saids Commissioners, to be Just, and Lawful: And als with this provision, that if the Failziers shall purge themselves, by lawful, and reasonable causes before Our saids Commissioners, of their not up-giving of their Rentals. That then, and in that case, Our saids Commissioners shall have power to appoint to them whose failzie shall be so purged, Annual-rent at *Ten* of the *Hundred*, from the time of Our Thesaurer's entry to their saide Few-mails, to the time of the payment of the said Composition, which is appointed to be made at the up-giving of their said Rentals in manner foresaid. *And because*, in trying of the Rentals of the saids Few-ferms, Few-mails, and other constant Rent foresaid, there may occur question betwixt Two, or moe Persons, and Parties claiming right to the saids Few-ferms, Few-mails, and other constant Rent foresaid, in whole or in part, by Infestments, Pensions, Life-rents, or other Right standing in their Person; In the which case Justice, and Equity craveth that each Person shall receive a portion of the said satisfaction, according to the quality of their Right, whether the same be Life-rent, Fee, Pension, Annual-rent, or other Right whatsoever, THEREFORE Wee Ordain Our saids Commissioners to take trial of the saids several Rights, and accordingly to appoint the saids sums ordained to be payed by Our said Thesaurers, and Receivers for composition, and satisfaction as said is, to be payed, or divided amongst them, according to the quality of their Rights. *And Wee Will*, and *Declare* that the Difference or disput to be made amongst the saids Parties, having, or pretending to have right to the saids Few-ferms, Few-mails, and other constant Rent foresaid, after the true Rental thereof be once tryed, as said is, shall be no hinderance nor impediment, to Our said Thesaurer, and Thesaurer-deput, to medle, and intromet, with the saids Few-ferms, Few-mails, and other constant Rent of the saids Superiorities: They alwayes paying, or consigning the saids sums decerned by Us, as said is, in presence of the saids Commissioners, to be forth coming to all the saids Parties, who pretends interest thereto, according as Our saids Commissioners shall appoint. *And Farther Wee Declare*, that Our entry to the saids Few-ferms, Few-mails, and other constant Rent foresaid of the saids Superiorities, shall be, and begin at the Feast, and Term of *Whitsunday*, or *Martimes* next, and immediatly following the payment, or consignment to be made by Our Thesaurer, Principal, or Deput in Our Name, to each person up-giver of his Rental of the sums of money dew to be payed, conform to this Our Decreet, and determination, And at the term next, and immediatly following the failzie to be committed by those who shall not give up their Rental in manner foresaid, Our Thesaurer, and Thesaurer-depute, being alwayes acted for payment to them, after they shall give up their Rentals in manner foresaid. *And als Declares*, if any of the saids Few-ferms, Few-mails, and other constant Rent foresaid, be payable at other terms, nor the saids ordinary terms of *Whitsunday*, or *Martimes*, that Our entry shall be ruled, and divided according to the respect of the saids ordinary terms of *Whitsunday*, and *Martimes*, in manner above-exprest, sua that if payment or consignment shall be made by Us at *Whitsunday*, then the whole year, and Cropt shall be due to Us, and if the same shall happen to be at *Martimes*, then the halfe allennerly shall be dew to Us; And the like course to be observed, where the failzie shall be committed in not up-giving, of the Rentals in manner before exprest. NEXT, Whereas the saids Persons

Submitters have submitted to Us, All and sundry the Teinds that they, or any of them have of Other mens Lands by whatsoever right, or title they possess, or enjoy the same, and how they may be denuded thereof in Our favours; And als have submitted to Us the rate, and quantity of Teinds, price of the same, and manner of security to be made thereanent. *Wee find*, That it is necessary, and expedient, for the publick well, and peace of this Our Ancient Kingdom, and for the better providing of Kirks, and Ministers Stipends, and for the establishing of Schooles, and other Pious uses, that each Heretour have, and enjoy his own Teinds. AND THEREFORE, to the effect, full, and perfect security may be made to every Heretour of his own Teinds. WEE DECERN, and ORDAIN, the said Submitters, and every one of them, and their Heirs, to denude themselves of the right of Other mens Teinds, in Our favours, by all lawful manner, as may stand by the Laws of the Kingdom, and that of the Cropt 1629. years, and yearly thereafter in all time coming. *And to that effect*, Wee decern the said Submitters, and every one of them, and their Heirs, to exhibit their Rights, Infestments, Tacks, and other securities whatsoever, whereby they bruick the saids Teinds of Other Mens Lands, to Our Advocat, or Clerks of Our saids Commissions, at such diets, and times, as they shall be required, to the effect, he upon the sight thereof may form such lawful and valide securities in Our favours as may stand by Law. *Which* securities, Wee decern the saids Submitters to subscribe, providing they be no farther oblidged in warrandice thereof, but from their own deeds, and from the facts, and deeds of their Predecessours, to whom they are Heirs. Excepting therefrom such facts, and deeds, as is made, and perfected by any of the Submitters, and their foresaids, in favours of the present Possessours, Tacks-men, and others having right from them of the same Teinds. Whereupon they, and every one of them shall be oblidged to condescend at the time of the exhibition of their rights, to Our said Advocat, or to the Clerks of Our saids Commissions. And as to the rate, and quantity of Teinds, Wee ratife, and approve the course, and order taken by Our special Command, and direction for valuation of the whole Teinds of the Kingdom, so farre as shall be justly, and lawfully done, according to the tenour of Our Commissions, and Ordains the Commissioners, and Sub-commissioners already appointed, or to be appointed to that effect, to expd the same with all convenient diligence, and finds, and declares that the rate, and quantity of all Teinds of the Kingdom, is and shall be the Fifth part of the constant rent, which each land payeth in stock, and Teind, where the same are valued joyntly. And where the Teinds are valued a part, and severally, *Findeth* that the rate, and quantity thereof is, and shall be such as the same shall be valued, and esteemed to, by the saids Commissioners, or Sub-Commissioners, Deducing alwayes the Fifth part thereof; Which Wee out of our Fatherly, and Royal care, for the well of Our said Kingdom ordaine to be deduced off the saids Teinds severally valued as said is, for the ease, and comfort of Our Subjects: Reserving alwayes liberty to such as shall be enormly hurt, and greived in the valuations foresaids, either conjunctly, or severally made, to appeale to Us, or Our Parliament, to the effect Wee may take such order therein, as may rectifie all abuses, and disorders committed, or to be committed in the saids valuations. AND AS to the price of Teinds, *Wee Find* the price of each *Hundred merks* of Teinds consisting in money, to be valued, and esteemed to Nine years purchase, and where the saids Teinds consists in Victual, or other bodies of Goods; Because there is great difference of the quality of Victual, and of the other bodies of Teinds, both in spaces, and kinds, and in worth, and goodness, according to the diverse places in the Countrey where the same groweth, and are bred; *Therefore Wee Decern* and *Ordain* tryal to be taken by Our Commissioners appointed, or to be appointed by Us, of the price, worth, and estima-

tion of each Chalder of Victual, and of all other bodies of Goods, wherein the Teinds consisteth in Kinds, and Goodness, as the same commonly ruleth in each part of the Countrey: And this being tryed, and condescended upon, and the prices thereof being reduced in moneys: *Wee Find* the just, and reasonable Price thereof to be esteemed to Nine years purchase: And Wee declare this Nine years purchase, to be the just price of the heretable right of Teinds, where the Seller hath the heretable right thereof; But where his rights are not heretable, but temporal, and consisteth in Leases, and Tacks, or some other temporal right, whereof there are many, or few years to run: Wee Declare the price in this case to be ruled proportionally, according to the number of the years to run and quality of the rights. *And because* many Heretours of Lands, hath Tacks long, or short of their own Teinds, or some other right thereof standing in their Person, in the which case it is not reasonable, that the Heretours should pay the full price to the persons having right to their Teinds. *Therefore* Wee referre this point also to our Commissioners appointed, or to be appointed, to determine, and set down the proportion of the price, according to the years of the Tacks to run, and quality of rights standing in the Persons of the saids Heretours, and according to the quality of the Rights standing in the Persons of those who hath Title to the saids Teinds, after the out-running of the Heretours Tacks, and rights of the same. *It is alwayes Declared*, that the saids Heretours who shall buy their own Teinds, shall be obliged to pay for no more of the same, but such as shall rest by and attour the Ministers Stipends, and other pious uses, which by the tenour of the General Commission are ordained to be first provided. *And als* that those who shall not buy their own Teinds, and are to be subject in payment of the rate of their Teind above-specified, shall be no farther obliged in payment thereof to the saids Titulars, but with deduction of such part & portion thereof, as is, or shall be, provided to the maintenance of the saids Ministers, and other pious uses foresaid, exprest in the said general Commission, Which Wee Will, and Ordain to be deduced, according to the tenour of the said Commission, and Acts thereof made, or to be made therein, Or in any other Commission to be appointed hereafter by Us, in favours of the Ministers, and other pious uses therein mentioned. *And Declares* the saids Titulars to be free, and liberat of the Ministers Stipends *pro rata*. *And Decerns* the saids Heretours to free, and relieve the saids Titulars at the hands of the Ministers, and others having right of that part of the saids Teinds, which shall be assigned, and appointed to be payed to the saids Ministers, and to the other pious uses foresaid: And als to relieve the saids Titulars at Our hands anent the payment of Our Annuity; And to make yearly payment of the foresaid burdens, for reliefe of the saids Titulars *Pro rata*. **AND SICLYKE** *Wee Decern*, where Wee, or any other have right to Teinds, after inspection of their Evidents, and due consideration of their Rights by Our selfe, or by such Commissioners, as Wee shall appoint, That accordingly in regard of the rights that Wee, or they shall be found to have, and for making up of a perfect right to the Heretours, such a part, or price, or payable Rent shall be ordained to be payed, and applyed to Our, or their use. **AND Because** Wee have a special, and particular interest in the Teinds of Erected Benefices, and that Reason, Conscience, and Justice craveth, that a part of the price thereof, or where price is not payed, a part of the yearly dewty should be applyed to Our use. *And because* all Erections are not of one nature, and kind, but some of them deserveth more consideration, and respect nor others, according to the true causes, merits, and services, for which the same were granted. **THEREFORE** Wee remit the tryal hereof to Our saids Commissioners, to determine what proportion of price, or rent shall be defeased, or allowed to Us of the saids Teinds of Erections, according to the validity, and

merit of each Persons rights after the production of the same to Our Advocat. AND *because*, by an express clause in the saids Submissions, It is specially Declared by Us, That Wee would take to Our Princely consideration, the lawfull Tacks, and Rights of Teinds of erected Benefices, and of all Laick-Patronages, made, and set to the present Possessours, or their Authors, by lawful Abbots, Laick-Patrons, and others Titulars of Benefices, lawfully set before the dates of the saids Erections: And for the spaces, and years of the said Tacks, Rights, and Patronages as yet to run; To the effect that they might have full, and plenary satisfaction for the saids Tacks, Rights, and Patronages according as Wee should find the validity thereof, as is usual in the like cases, with the burden alwayes of Our Annuity mentioned in the saids General Securities, and Submissions. *And to the effect*, Wee might be informed of their saids Tacks, and Rights, before the giving forth of Our determination in the premisses. IT WAS, and is ORDAINED, and *Provided*, that such of the saids Lords of Erections, and other Persons foresaid, as have such Tacks, or Rights made, and set unto them, their Predecessours, and Authours, before the saids Erections, should exhibit, and produce the same to Our Advocat, at such diets, and times, as should be appointed by Us, or Our Chancellour, at Our command, and direction, before the giving forth of Our determinations in the premisses: LYKEAS also it is specially provided, That the saids general Submissions, should no wayes be prejudicial to whatsoever action of Warrandice competent to the saids persons Submitters, or any of them, against their Authours from whom they bought, or acquired their Rights of the saids Teinds (which falleth within the Compass of the saids Submissions) for sums of money; But that either the saids actions of Warrandice shall be reserved unto them, conform to the tenour of their Rights made to them thereupon: Or otherwise, That the satisfaction to be decerned in their favours shall be answerable to their warrandice, and no wayes inferiour thereto; The said Persons, and sua many of them who have their actions of warrandice reserved to them in manner foresaid, Exhibiting, and producing their saids rights, bearing the warrandice foresaid, To Our Advocat, at such diets, and times as should be appointed, and prescribed to them by Us, or Our Chancellour, at Our command, and direction, before the giving forth of Our Determination in the Premises; As in the saids general Submissions at more length is contained. AND FOR SAMEIKLE As Wee according to the provisions contained in the saids Submissions, by Our Letter, of the date the last day of *Junij* 1628. Gave special warrand to Our Commissioners for production of the foresaid Tacks, Leases, and others foresaid, who by their Act, and Ordinance of the date the Eight day of *August*, and by publick Proclamation past thereupon: Ordained that all the saids Persons having interest, should compear before them upon the first of *November* 1628. years; Bringing, and producing with them, all their Leases, and Tacks of Other Mens Teinds, set to them, or their Authours, before their Erections, together with all their rights, and securities of the foresaid Teinds, bearing absolute warrandice, or warrandice of their own moneys in case of eviction: To the effect, the same might be seen, and considered by Our Advocat, with certification to them that failzies, that they should not be heard to claime any satisfaction for the same thereafter. *And* that some few allanerly of the saids Persons having interest, have given in their Tacks, and Rights, bearing warrandice as said is: Sua that by rigour of Law, Wee might give out Our Determination without respect of the saids Rights, not produced to Our said Advocat, conform to the provision contained in the saids Submissions. YET WEE out of Our Royal clemencie, and goodness DECERN, and ORDAIN full, and plenary satisfaction to be made, not only to those who have already produced, and whose productions are extant in the Registers of the said general Con-



mission : But also to all other persons Submitters, who have lawful Tacks set to them, their Predecessours, or Authours of the saids Teinds of Erected Benefices, which falleth within the compass of the saids Submissions, for the Rights of the saids Teinds during the spaces contained in their saids Tacks, and that without any defalcation, or diminution of the price thereof, in respect of Our particular right, and interest ; But according to the full avails of the years to run contained in the saids Tacks ; They alwayes exhibiting, and producing to Our Advocat for the time, or Clerks of Our Commissions foresaids, their saids Leasses, and Tacks, betwixt this and the last day of *May* next to come, and no otherwayes ; And because after production thereof, every Person will not have alike years, and spaces to run in their saids Tacks ; Therefore Wee referre to Our saids Commissioners to set down the just worth, and valuation of the saids Tacks set before the saids Erections, according to the number, and spaces of years of the same which is yet to run ; And to modifie the said price, to each Person accordingly. AND SIC-LIKE, Wee *Decern*, and *Ordain* That the saids Persons Submitters, nor none of them shall be any wayes prejudged by their saids Submissions, of their actions of warrandice, competent to them against their Authours, from whom they bought, or acquired their Rights of the saids Teinds, which falleth within the compass of the saids Submissions : But declares their saids actions of warrandice, to be free, and reserved to them, allowing alwayes in the first end thereof, so much as they are to receive by virtue of this Our determination, in the first end of their said warrandice ; And if any of them shall happen to be prejudged by, or through occasion of their subscribing of the saids Submissions, of their saids actions of warrandice, and to be debarred therefra in whole, or in part, by occasion thereof. In that case Wee *Decern*, that whatsoever by Law they might obtain against their saids Authours by their action of warrandice, for warranding of their rights of the saids Teinds, which falleth within the compass of the saids general Submissions : And fra the which they are or shall be debarred by and through the saids Submissions, and this Our determination following thereupon : That the same shall be refunded to them by Our said Thesaurer-principal, Thesaurer-depute, and Receivers foresaids : They alwayes exhibiting, and producing to Our said Advocat, or Clerks of Our Commissions foresaids, their saids rights bearing warrandice in manner foresaid, betwixt and the last day of *May* next to come, and none otherwise. AND Wee FIND, and DECLARE, That this general course, and order, That every Heretour shall brueick, and possess his own Teinds, shall have begining in this instant year of God 1629. years, The saids Heretours being alwayes ready to fullfil, and perform their part of this Our determination, And to the effect, that the saids Titulars may receive full, and compleat satisfaction of the price of the saids Teinds, sua farre as is due to them by this Our determination, from the saids Heretours who shall buy their Teinds as said is, or where they shall not buy, that the saids Titulars may be secured in the yearly rate, and quantity of the saids Teinds to be paid to them of the said Crompt 1629 years, and yearly thereafter ; Wee Referre the consideration of the terms of payment of the saids prices, And also the terms of payment of the said payable rent of the said Crompt 1629, and yearly thereafter, Together with the manner, and form of security to be given thereanent, by the saids Heretours, to the saids Titulars, unto Our saids Commissioners ; To whom Wee give full power to set down, such ample securities as may stand by Law, both for Our security, and for the security of the saids Titulars in the premisses. Which form of security to be ordained by them, Wee decern the saids Heretours to observe, and fullfil in all points, after the form, and tenour thereof. Like as also Wee referre to the consideration of Our saids Commissioners, what manner of security shall be made by Us, to every

Heretour of the Teinds of his own Lands; To the effect they may bruick the same heretably, and perpetually for ever, according to the meaning of this Our determination. AND WEE DECERN, the saids whole Persons Submitters, their Heirs, and Successours, to obtemper, fulfil, and obey this Our determination, in the whole Heads, and Articles thereof; They receiving lawful, and perfect securities, conform to the tenour of Our Commission, and whole heads thereof, particularly, and generally mentioned in the saids general Submissions: And als receiving real payment of that which Wee have Ordained by this Our determination, before they denude themselves, either of Right, or Possession, of the saids Few-mails, and Teinds; And that in manner particularly exprest in this Our determination, as is above-specified. AND FINALLY, Wee Ordain this Our determination, with the whole Submissions, whereupon the same proceeds, to be registrat in the books of Our Council, and Session to have the strength, and force of a Decreet of the Lords thereof, with execution to pass thereupon in form as effeirs. and the Horning to pass upon a simple charge of Ten dayes allanerly. And to that effect, makes, and constituts

Our Advocat, Our Procuratur, to compear for Us, and consent to the registering hereof, in manner fore-said. *In Witness* whereof, Wee have signed these presents with Our hand At *Windsore*, the second day of *September*, the year of God 1629. years; Before these Witnesses, *William* Earl of *Menteith*, *President* of our Council, and *High Justice of Scotland*; Sir *William Alexander* of *Menstry* Knight, Our *Secretary*, Sir *Coline Campbel* of *Lundee* Knight, Barronet, Sir *James Lockhart* younger of *Ley* Knight, and Master *William Elphinstoun* One of Our *Cup-bearers*.

*HIS MAJESTIES DECREET pronounced upon the Submissions made be certain Tacks-men, and Others having Right to Teinds.*

#### CHARLES R.

*CHARLES* By the Grace of God, King of Great Britain, France, and Ireland, Defender of the Faith: To all, and sundry Our Subjects whom it effeirs. *For Sameikle*, as Wee being fully resolved to have ane universal order established within Our Kingdom of *Scotland*, anent the matter of Teinds; and that every Heretour shall have, and bruick his own Teinds, of whatsoever nature the saids Teinds be of, and to whatsoever benefice the same pertaineth, at a competent rate, and price; And understanding that diverse of Our Subjects had deferred to subscribe the first general Submissions anent the saids Teinds, upon pretence that the Arch-bishops, Bishops, Parsons, Vicars, and Others of the Clergy had not subscribed the saids general Submissions: Which impediment was thereafter removed by a several Submission, subscribed by the saids Bishops, and Clergy to Us. *Therefore*, Wee by Our Letter and Warrant, directed to the Commissioners for Teinds, of the date the 28. day of *October* last by-past, did signify Our will, and pleasure: That all Titulars of Teinds, pertaining to whatsoever Kirks, or Benefices; And als all Heretours of Lands, the Teinds whereof pertaine to the saids Benefices, and Kirks, should subscribe a general submission unto Us: Referring to Us the price, rate, and quantity of whatsoever Teinds of Other mens Lands. Which Letter being read, and considered by the saids Commissioners of Teinds, they by their Act of the date the Third day of *December* last by-past: Did in all humility acknowledge Our Gracious, and Fatherly care for the good of Our said ancient Kingdom, and allowed, and approved the said Letter, and interponed their Authority thereto. Conform to the which there was certain Submissions drawn up: Whereby all Persons subscribers of the saids Submissions, having, or pretending right, by whatsoever Title, Tacks, or other manner of right, to whatsoever Teinds of Other mens Lands, pertaining to whatsoever Bishoprick, Abbacy, Pryory, Parsonage, Vicarage, Colledge, Kirks, Prebendary Chaplanry, or other

Benefice whatsoever: And siclike the Heretours, and Possessours of whatsoever Lands lying within the saids Benefices, and whq are desirous to have the Teinds of their own Lands pertaining to the saids Benefices, at a competent rate, and price, submitted, and by the tenour of the saids Submissions, did Submit unto Us, All, and sundry Teinds, that they, or any oft hem had of Other mens Lands, by whatsoever right, or title they Possessed, and enjoyed the same, and how they might be denuded thereof, *Omni habili modo quo de jure*. And als did submit unto Us, to appoint the quantity, and rate of Teinds, and what price shall be given for the same, and what security shall be made of the Teinds of other mens Lands, to the Heretours, and Possessours thereof, in such form as might stand by Law, and were contented, and consented that wee should give out Our pleasure, and determination, anent the premisses referred to Us, in manner foressaid, betwixt the day, and date of the saids Submissions, and the last day of *December*, 1629. years: As the saids Submissions subscribed by the particular Persons, Titulars, and Heretours of the several dates thereof, in themselves, more fully properts. *And Wee being well, and ripely* advised anent the premisses: And finding it necessar, and expedient for the publick well, and peace of that Our ancient Kingdom; and for the better providing of Kirks, and Ministers Stipends, and for establishing of Schools, and other Pious uses: That each Heretour have, and enjoy his own Teinds: And therefore to the effect, full and perfect security may be made to every Heretour of his own Teinds: *Wee Decern and Ordain*, The saids Submitters, and every one of them, and their Heirs, to denude themselves of the right of Other mens Teinds, by all Lawful manner, as may stand by the Laws of Our Kingdom, and that of the Cropt 1629. years, and yearly thereafter in all time coming, and to make, and subscribe good, valide, and lawful securities to each Heretour of his own Teinds, by the sight of Our Advocate present, and being for the time, providing they be no farther oblidged in warrantice thereof, but from their own deeds, and from the facts, and deeds of their Predecessours, to whom they are Heirs: Excepting therefrom such facts, and deeds, as is made, and perfected by any of the Submitters, and their foresaids, in favours of the present Possessours, Tacks-men, and Others having right from them of the same Teinds. And as to the rate, and quantity of Teinds, Wee ratify, and approve the course, and order taken by Our special command, and direction, for valuation of the whole Teinds of the Kingdom, sua far as shall be justly, and lawfully done according to the tenour of the Commissions: And Ordains the Commissioners, and Sub-Commissioners already appointed, or to be appointed for that effect, to expd the same with all convenient diligence. *And Finds, and Declares*, that the rate, and quantity of all the Teinds of the Kingdom, is, and shall be the *Fifth* part of the constant rent which each Land payeth in stock, and Teind, where the same are valued joyntly: And where the Teinds are valued a part, and severally, *Findeth* that the rate, and quantity thereof, is, and shall be such as the same shall be valued, and esteemed to, be the saids Commissioners, or Sub-Commissioners, deducing alwayes the *Fifth* part thereof, which Wee out of Our Royal, and Fatherly care for the well of Our said Kingdom, Ordain to be deduced off the saids Teinds severally valued as said is, for the ease, and comfort of Our Subjects. Reserving alwayes the liberty to such as shall be enormly hurt, and greived, in the valuations foressaids, either conjunctly, or severally, to appeale to Us, or to Our Parliament; To the effect Wee may take such order therein, as may rectify all abuses, and disorders committed, or to be committed in the saids valuations. And as to the price of Teinds, Wee find the price of each *Hundred merks* of Teinds consisting in money, to be valued and estimat to *Nine* years purchase. And where the saids Teinds consists in Victual, or other bodies of Goods; Because there is great difference of the quality of Victual, and of other

bodies of Teinds, both in species, and kinds, and in worth, and goodness, according to the diverse places in the Countrey where the same growes, and are bred. *Therefore*, Wee decern, and Ordain tryal to be taken by Our Commissioners appointed, or to be appointed by Us, of the price, worth, and estimation of each Chalder of Victual, and of all other bodies of Goods, wherein the Teinds consisteth in kinds and goodness, as the same commonly ruleth in each part of the Countrey. And this being tryed, and condescended upon, and the prices thereof redacted to money, Wee find the just, and reasonable price thereof, to be estimat to Nine years purchase: And Wee *Declare* this Nine years purchase to be the just price of the heretable right of Teinds, where the Seller hath the heretable right thereof; But where his right is not heretabel, but temporal, and consists in Leases, and Tacks, or some other temporal right, whereof there are many, or few years to run. Wee declare the price in this case to be ruled proportionally, according to the number of the years in the Tacks to run, and quality of the Rights. *And because* many Heretours of Lands hath Tacks long, or short of their own Teinds, or some other right thereof standing in their person; In the which case it is not reasonable that the Heretours should pay the full price to the Persons having right to their Teinds. *Therefore* Wee referre this point also to Our Commissioners appointed, or to be appointed, to determine, and set down the proportion of the price of Teinds, according to the years of the Tacks to run, and quality of the Rights standing in the persons of the saids Heritours, and according to the quality of the rights standing in the persons of these who hes Title to the saids Teinds, after the out-running of the Heretours Tacks, and Rights of the same. *It is alwayes* declared, that the saids Heretours who shall buy their own Teinds, shall be obliged to pay for no more of the same, but such as shall rest by and attour the Ministers Stipend, and other Pious uses, which by the tenour of the general Commission, are ordained to be first provided. And als that those who shall not buy their own Teinds, and are to be subject in payment of the rate of their Teinds above-specified, shall be no farther obliged in payment thereof to the saids Titulars, but with deduction of such part, and portion thereof, as is resting by and attour the saids Ministers Stipends, and pious uses foressaids. *And siclike* Wee *Decern*, where Wee, or any of the saids Titulars have right to the Teinds of Other mens Lands, after inspection of their rights, and due consideration thereof by Our Commissioners appointed, or to be appointed for that effect; That accordingly in regard of the rights that Wee, or they shall be found to have, such a part of the price, and payable rent, shall be ordained to be payed, and applyed to Our, or Their uses. *And Wee Find, and Declare*, That this general course, and order, that every Heretour shall bruick, and possess his own Teinds, shall have beginning in this instant Cropt, and year of God 1629. years: The saids Heretours being alwayes ready to fullfil, and perform their part of this Our determination. And to the effect that the saids Titulars may receive full, and compleat satisfaction of the price of the saids Teinds, sua far as'is due to them by this Our determination, from the saids Heretours who shall buy their own Teinds as said is: Or where they shall not buy, that the saids Titulars may be secured, in the yearly rate, and quantity of the saids Teinds, to be payed to them of the said Cropt 1629. and yearly thereafter, Wee referre the consideration of the terms of payment of the said pryces and als of the termes of payment of the said payable rent of the said Cropt 1629. years, and yearly thereafter, together with the manner, and form of the security to be given thereanent by the saids Heretours, to the saids Titulars, unto Our saids Commissioners, appointed, or to be appointed, To whom Wee give full power to set down such ample securities as may stand by Law, both for Our security, and for the security of the saids Titulars in the premisses: Which form of security to be ordained by them, Wee

decern the saids Heretours to observe, and fulfil in all points, after the form, and tenour thereof. *And Wee Decern* the saids whole Persons Submitters, their Heirs, and Successours, to obtemper, fulfil, and obey, this Our determination, in the whole Heads, and Articles thereof, they receiving lawful, and perfect securities, conform to the tenour of Our Commission, and whole heads thereof, particularly, and generally mentioned in the saids general Submissions: And als receiving real payment of that which Wee have ordained by this Our determination before they denude themselves either of right, or possession of the saids Teinds, and that in manner particularly exprest in this Our determination, above-specified. *And finally* Wee ordain this our determination, with the whole Submissions whereupon the same proceedeth, to be registrat in the books of Our Council, & Session: To have the strength, & force of a Decreet of the Lords thereof, with execution to pass thereupon, in form as effairs, and the Horning to pass upon a simple charge of Ten dayes allennerly. And to that effect makes, and constituts

Our Advocat, Our Procuratour, to compear for Us, and consent to the registering hereof in manner foresaid. *In Witness* whereof Wee have signed these presents, with Our hand, At *Windsore* the Second day of *September*, the year of God 1629 years. Before these Witnesses *William Earle of Monteith*, President of Our Council, and High Justice of Scotland, *Sir William Alexander of Menstry* Knight, Our Secretary, *Sir Coline Campbel of Lundie* Knight, Barronet, *Sir James Lockhart* younger of *Ley* Knight, Master *William Elphinstoun*, One of Our Cup-bearers, and Master *John Marwel* Minister at *Edinburgh*.

*HIS MAJESTIES DETERMINATION* upon the Submissions made by the Bishops.

#### CHARLES R.

*CHARLES* By the Grace of God, King of Great Britain, France, and Ireland, Defender of the Faith. To all, and sundry Our Subjects whom it effairs. **FOR SAMEIKLE** As the Arch-Bishops, Bishops, and remanent Clergy within Our Kingdom of Scotland, Subscribers of the Band, and Submission after-specified. *Considering* that Wee out of Our Royal care, Fatherly, and tender affection to the publick good of all Our Subjects of that Our Kingdom, for freeing them from the extremity, and damage which may ensue to them by leading of their Teinds, did intend to take such course as hereafter every Heretour may possess, and enjoy the Teinds of his own Lands, for payment of a reasonable rate, and dewty for the same: And the saids Arch-Bishops, Bishops and Clergy foresaids, acknowledging themselves to be bound in duty to advance that Our Royal designe; & being willing that all such Heretours as are subject to the payment of any Teinds to them, or any of them, shall have their own Teinds, being desirous thereof, for payment to them, and their Successours, of such a reasonable rate, and constant yearly rent, as Wee should determine to be the Quota, and rate of Teinds, within the rest of Our said Kingdom: So as the dewty, and rate in Silver, and Bolles payed at the present to them, or to the Ministers serving at their particular Kirks, be not in any sort hurt, nor diminished: And als considering the great benefit, which the said course intended by Us, may import to their Successours, who are there by to have a certain, and constant yearly rent, which may not be altered by any Titulars in prejudice of their Successours. *Therefore* the saids Arch-Bishops, Bishops, and remanent Clergy foresaid, by their Band, and Submission, subscribed with their hand, of the date at

The year of God 1628. years:

Hath bound, and oblidged them, and their Successours, to grant to every Heretour of the several Lands, whereof the Teinds doe appertain to them, or any of them, (being desirous of the same) such sufficient security thereof as may stand with the

Laws of the said Kingdom : And for such a reasonable rate, and rent, or Rental Bolls, as Wee shall determine to be the *Quota*, and rate of Teinds : Submitting themselves thereanent to our Royal Decreet, and Sentence, to be pronounced at or before the last day of *December*, in the year of God 1629. years, And anent what lawful security in manner foressaid, shall be made, or given by them, or any of them to the saids Heretours of their own Teinds belonging to their Bishopricks, or Benefices ; For payment to be made by the saids Heretours to them, and their Successours, of the said *Quota*, and rate, or constant rent, or Rental, to be set down by Us, for the saids Teinds out of the saids Lands subject to the payment thereof yearly in such manner, and at such terms, as Wee shall be pleased to appoint. And anent the making, setting down, and establishing, of the said *Quota*, or rate of the saids Teinds, rent, or rental-bolls, payable yearly for the same, to them, and their Successours. And anent what security the saids Heretours shall make for the sure, true, timous, and thankful payment to them, and their Successours of the said yearly rent, and rental-bolls, at such times, and terms of payment, as Wee shall think fit to be contained in the securities of the saids Teinds. And anent the Annuity hereafter payable by the saids Heretours, for encrease of Our Rents, providing that they, and every one of them peaceably enjoy the fruits, and rents of their several Benefices, as they were possess by them at the time of the said Submission, and that at such rents as should thereafter belong, and accresce to them, or any of them, and their Successours by Our said Decreet, anent the said *Quota* to be payed by the saids Heretours for the remanent of the saids Teinds which were not in their present possession, should be sett secured, and made sure to them, and their Successours, leaving the saids Heretours of the Lands, out of which the Teinds are due to them, to submit themselves to Our Decreet, and Determination, anent the Annuity, and other premisses, which concerns them, to be pronounced before the last day of *December*, 1629. years. With power to Us to give forth Our Sentence, Pleasure, and Determination anent the premisses, betwixt the date hereof and the said last day of *December* 1629. years. As in the said Band, and Submission of the date foressaid at more length is contained. And Wee having at great length considered, and advised, what is most fit to be done by Us, in the premisses submitted to Us, both for the well of the saids Bishops, and their Successours, and for establishing of a constant Victual Rent to them, after the expiring of the present Tacks, wherewith the same are burdened : And for better plantation of Kirks pertaining to them. And als for the peace, and quietness, of Our said Kingdom, that no person have the leading of any Other mens Teinds, but the Heretours of the Lands allennerly : *Pronounceth* Our Sentence, and Determination therein as followeth. IN THE first Wee find the *Quota*, or rate of all Teinds pertaining to the saids Bishopricks, and other Benefices foressaid, which falleth within the compass of the said Submission, To be the Fifth part of that which each Land payeth of constant rent of *Stoek*, and Teind, where the same are joyntly valued, conform to the course, and order taken, or to be taken for the valuation of the same. And where the Teinds are valued severally, and apart, *Findeth* that the rate, and quantity thereof is, and shall be such as the same shall be valued to by Our Commissioners appointed, or to be appointed to that effect : Deducing alwaies the fifth Part thereof, to make the same equal to constant rent *communibus annis*. And *Finds*, and *Declares*, that if in the valuation of the saids Teinds, either joyntly to be made with the Lands, or severally, there be any sensible hurt, greivance, and prejudice committed, in excess, or diminution, which shall require to be rectified by Us : That it shall be lawful to the parties greived to appeal to Us, or to Our Parliament, to the effect Wee may see order put thereto as effeirs. And *Decerns*, and *Ordains*, the saids Submitters, and their Successours, to grant

to every Heretour of the several Lands, whereof the Teinds appertaineth to the saids Submitters, or any of them being desirous of the same, and to their Heirs, and Successours, Heretours of the saids Lands, such sufficient security thereof as may stand with the Laws of Our said Kingdom, for payment of the said rate, and rent, determined by Us, as said is ; And that of the Cropt, and year of God 1629. years, and yearly thereafter, the saids Heretours alwaies who shall desire to have the right of their saids Teinds in manner foresaid, their Heirs, and Successours, making, and subscribing such lawful securities to the saids Submitters, and their Successours, for payment of the said *Quota*, and Rate yearly, betuixt *Zuile* and *Candlemess*, after the Cropt, with the deduction alwaies of Our Annuity forth of the excresce of the Bols, and rent arising to the saids Submitters, and their Successours, after the expiring of the present Tacks, in manner after-specified : And that in such lawful, and perfect manner, as may stand by the Laws of Our Kingdom, and shall be devised by Our Advocat ; To whom Wee referre both the manner of right, and security, to be made by the saids Submitters, to the saids Heretours of the saids Teinds : And als of the security to be made by the saids Heretours to the saids Submitters, & their Successours, for sure payment of the rent, and dewty above-specified, together with Our Annuity dew to Us, for encrease of Our Rent, to be payed by the saids Heretours, and their Successours, to Us, and Our Successours, for such part of the said rent, and Bols as shall accresce to the saids Submitters by the valuations foresaid, after the expiring of the present Tacks of the Teinds of their saids Lands, pertaining to their saids Bishopricks, and Benefices. Which Annuity shall be allowed, and defeased to the saids Heretours off the first end of the said rent, which shall accresce to the saids Submitters, and their Successours as said is, but prejudice alwaies to the saids Submitters, and their Successours, and to the Ministers provided to the several Kirks under them : To bruik, and possess the fruits, and rents of their several benefices, whereof payment was made to them, the time of the making of the said Submission, and that without all burden of Our said annuity. *AND Wee Find, and Declare* That it shall not be lawful to the saids Submitters, and their Successours, to be provided to the saids Bishopricks, and Benefices, to set any Tacks long, or short, or to make any other disposition of the saids Teinds pertaining to the saids Bishopricks, and Benefices, after the expiring of the present Tacks thereof, but allennerly for payment of the said rate, rent, and *Quota* now determined by Us, which shall remain whole, entire, & unhurt in quantity, or quality, and so transmitted to the Successours for ever, without any change, alteration, diminution, conversion in money, or other prejudice whatsoever : Reserving to Us Our Annuity of that which shall accresce after the expiring of the present Tacks in manner foresaid. *And Wee* Ordain this Our Determination, with the said Submission whereupon the same proceeds, to be Registrat in the Books of Our Council, and Session, to have the strength, and force of a Decreet of the Lords thereof, with execution to pass thereupon in form as effeirs : And the Horning to pass upon a simple charge of Ten dayes allennerly. And to that effect makes, and constituts

Our Advocat, Our Procuratour, to compear for Us, and consent to the Registrating hereof in manner foresaid. In Witness whereof, Wee have Signed these presents with Our Hand, At *Windsore*, the Second day of *September*, the year of God, 1629. years. Before these Witnesses, *William*, Earle of *Menteith*, *President* of Our Council, and High Justice of Scotland, Sir *William Alexander* of Menstry Knight, Our Secretary, Sir *Coline Campbel* of Lundie, Knight, Barronet, Sir *James Lockhart*, younger of *Ley* Knight, and Master *William Elphinstoun*, One of Our Cup-bearers.

*HIS MAJESTIES DETERMINATION, upon the Submission made by the Burrowes.*

*CHARLES R.*

*CHARLES* By the Grace of God King of Great Britain, France, and Ireland, Defender of the Faith, To all and sundrie Our Subjects, whom it effeirs. *For Sameikle*, As the Commissioners of the free Royal Burrowes within Our Kingdom of Scotland, having full Power, and Commission from their several Burghs; Considering that Wee out of Our Royal care, Fatherly, and tender affection, to the Publick good of all Our Subjects, of Our Native, and Ancient Kingdom of Scotland, for freeing them from the extremity, and damage, may ensue to them by leading of their Teinds; Intended to take such course as thereafter each Man might possess and enjoy the Teinds of the Lands pertaining to him in property. And they acknowledging themselves to be bound in duty to the advancement of all Our Royal designs tending to so Publick a good. *Therefore*, They by their Band, and Submission, of the date at *Perth*, the Second day of *July*, the year of God 1628. years, Bound and Obliged them, and each of them, Subscribers of the said Submission, and their Successours, for, and in name of the saids Burghs, to grant unto each Heretour of the several Lands, whereof the Teinds did to them appertain (after the expiring of the present Tacks already granted by them to the present Tacks-men) such rights, and securities for perpetual enjoying of their own Teinds, and for payment of such rates, and Teind, Rental, Bols of Victual, as Wee in Our Royal judgment should decern: Submitting themselves, & each one of them for their own parts thereanent, to Our Royal Decreet, and Sentence, and what should be the true rate, estimation, and quantity of the saids Teinds, and what security should be made to them, by the saids Heretours, for yearly payment to be made to them, each one for their own parts of the saids Teind-Bols of Victual, of such sorts as should grow upon the ground of the saids Lands yearly; As shall be determined by Us betuixt *Zuile*, and *Candlemes*. For payment whereof the samine Lands shall be lyable, and bound in security of the samine: And were content, and consented, each one for their own part, that Wee should give forth Our pleasure, and Determination, anent the premisses referred to Us in manner foresaid, betuixt the date of the said Submission, and the last day of *December*, in the year of God, 1629. years: As in the saids Submissions of the date foresaid, containing diverse other Provisions, at more length is contained. And Wee being well, and ripely advised anent the premisses, and finding it necessar, and expedient for the publick well, and peace of that Our Ancient Kingdom, that each Heretour have, and enjoy his own Teinds. *Pronounceth* Our Sentence, and Determination therein as followeth. *IN THE FIRST*, Wee *Decern*, and *Ordain*, the saids Burrowes Royal, Provosts, Baillies, and Council of the same, and their Successours, whose Commissioners have subscribed the said Submission; To grant unto each Heretour of the several Lands, whereof the Teinds doe appertain to them, their Heirs, and Successours (after expiring of the present Tacks, already granted by them to the present Tacks-men) such Rights, and Securities, for perpetual enjoying of their own Teind, for payment of the Rates, & Rental-Bolls after mentioned in such ample form, as may stand by the Laws of the Kingdom: The saids Heretours alwaies, and their foressaids, making, and Subscribing to the saids Royal Burrowes, & their Successours, such lawful Securities for payment of the *Quota*, and rate of Teinds after-specified yearly, betuixt *Zuile*, and *Candlemes*, for payment whereof the samine lands shall be lyable, and bound in security for the same; And that in such form, and manner as shall be devised by the sight of Our Advocat for the time, to whom Wee referre the manner, and form of the



Securities to be made by the saids Royal Burrowes, to the saids Heretours of their own Teinds, and by the saids Heretours, to the saids Royal Burrowes, of the rate, and *Quota* of Teinds after-specified. *And* as to the rate, and quantity of Teinds, *Wee Find* the *Quota*, or rate of all Teinds pertaining to the saids Royal Burrowes, to be the *Fifth* part of that which each Land payeth of constant rent in Stock, and Teind, where the same are joyntly valued, conform to the course, and order taken, or to be taken for the valuation of the samine: *And* where the Teinds are valued severally, and a part, *Findeth* that the rate, and quantity thereof is, and shall be such as the same shall be valued to by Our Commissioners appointed, or to be appointed to that effect. Deducing alwaies the *Fifth* part thereof to make the samin equal to the constant rent *Communibus annis*. *And Finds*, and Declares, that if in the valuations of the saids Teinds either joyntly to be made with the lands, or severally, their be any sensible hurt, greivance, and prejudice committed in excess, or diminution, which shall require to be rectified by Us, that it shall be lawful to the parties greived, to appeale to Us, or to Our Parliament, to the effect, *Wee may see order put thereto as effeirs*. *And Decerns* this course, and order that every Heretour shall have his own Teinds, to have the begining in the Cropt, and year of God 1629. years: The Tacks set to the present Tacks-men, being expired, or otherwise lawfully established in the Person of the Heretours by the saids Tacks-men who have right thereto. *AT-TOUR Forsameikle*, as by the said Band, and Submission, the foresaids Commissioners each one of them for their own parts, hath Bound, and Oblidged their saids Burrowes, and their Successours, that in case it shall be found, that the rents of the Teinds great, and small, Victual, or Silver dewties of the samina, doted for the sustentation of Ministers, Rector, and Regents of their Colledges, Masters of their Schools, and poor of the Hospitals of their several Burghs payed to them shall exceed the yearly sums of money expended by them for the foresaids Pious uses, and their entertainment in the Stipends of the saids Ministers, Rector, and Regents of their Colledges, Masters of their Schools, and of the Poor in their saids Hospitals; Then and in that case, to pay yearly to Us, and Our Collectours, each one of them for their own parts forth of the superplus, and excesce of the saids dewties remaining by and attour the payment of the saids Stipends due to the saids Ministers, Rectors, and Regents of their several Colledges, Masters of their Schools, and entertainment of their Poor in their Hospitals. Our Annuity due to Us in manner exprest in the said Submission. *Therefore Wee Ordain* Our Commissioners appointed, or to be appointed by Us, to take trial of the true estate of the Rents, and Teinds pertaining to each Burgh, and of the burden which they have for entertainment of their Ministry, and Poore, and of the Rector, and Regents of Colledges where the samine are, and to consider if there be any superplus, and excesce by and attour the burdens foresaids, forth of the which Our said Annuity ought to be payed; *And* according thereto, *Decerns* the saids Burrowes, and their Successours, to make payment to Us, and Our Collectours, of Our Annuity which is due to Us forth of the saids superplus, and excesce if any shall be found as said is. *And Wee Ordain* this Our Decreet, with the said Submission whereupon the samine proceeds to be registrat in the Books of Our Council, and Session, To have the force, and strength of a Decreet of the Lords thereof, with execution to pass thereupon, in form as effeirs: *And* the Horning to pass upon a simple charge of Ten dayes allennerly; *And* to that effect makes, and constituts.

Our Advocat, Our Procuratour, to compear for Us, and consent to the registrating hereof, in manner foresaid. In Witness whereof, *Wee* have Signed these presents with Our hand, At *Windsore* the Second day of *September*, the year of

God 1629. years; Before these Witnesses, *William Earl of Menteith*, President of Our Council, and High Justice of *Scotland*, Sir *William Alexander of Menstrie* Knight, Our Secretary, Sir *Coline Campbel of Lundie* Knight, Barronet, Sir *James Lockhart* younger of *Ley* Knight, Master *William Elphinstoun* One of Our Cup-bearers, and Master *John Maxwell* Minister at *Edinburgh*.

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APUD EDINBURGH,

XVIII DIE JUNII, A.D. M,DC,XXXIII.

6. *Against the Inverting of Pious Donations.*

OUR SOVERAIGNE LORD, With the Advice of the Estates, understanding that certaine persons piously disposed, have of late bestowed certaine gifts in Lands, Heritages, and summes of money, in favours of Colledges, Schooles, Hospitals, and other pious uses, which by the Administratours, and such others as they have entrusted with the managing thereof; are inverted to other uses then the Will of the disponder, upon some specious pretences, contrarie or different from the Disponers intention, to the evill example of others, and the hinderance of such and the like charitable works, against all reason and conscience. THEREFORE It is statute and ordained, that it shall no-waies be lawful to alter, change or invert any of the saids gifts, legacies, and other pious donations, to any other use then that specifick use whereunto they are destinate by the disponder himselfe. And that the Heires, Executors, or others entrusted with the saids gifts and legacies shall be comptable for the same, to the use of the Kirkes, Colledges, and others to whom the saids dispositions were made: And that actions shall be competent either to the saids Kirkes, Colledges, and others, to whom the same were disposed, or to the Bishops and ordinaries within the Diocesses where the saids Kirkes, Schooles, and others above-specified lye, for compelling them to apply the same to the true use. And to make compt and payment of the ordinarie profits of everie years intromission, at the rate allowed by the Lawes of the Realme, by and attour the fulfilling of the Disponers Will. And this Act to be extended to all Dispositions made at any time since the majoritie of King JAMES the Sixth, or to be made hereafter in all time comming. And that letters of Horning be direct at their instance, by deliverance of the Lords of Session without citation of parties.

7. *Anent Invading of Ministers.*

OUR SOVERAIGNE LORD, with the advice of the Estates, ratifies and approves the Act of Parliament made in the year of God one thousand, five hundred, fourescore and seaven yeares, anent the Invaders of Ministers, with this explanation and addition, That whosoever invades any Minister, or puts any violent hands on him, by themselves, their men, tenants, servants, or any others by their hounding out, direction, or allowance, for whatsoever cause or occasion; whither the same be for the cause contained in the said Act, or for any other cause, otherwise then by order of Law; or doth offer violence to them, shall incurre the like paine as is contained in the said Act, and shall be judged after the forme and manner therein prescribed. And declares, that the same shall be extended to all Arch-bishops, Bishops, and Ministers whatsoever, having power by lawful warrant to preach, and administer the Sacraments. And because the malice of some is such, that the invasion and violence foresaid may be committed by lawlesse and unresponsal men, the hounders out of whom cannot be gotten detected; so as the benefite of this

Act, and the indemnitie, of the said Church-men & their foresaids may be frustrate. THEREFORE it is statute and ordained, That the Land-lords, and Heritors, and chiefe of Clanns, and others in whose bounds the saids offenders dwell, or haunt ordinarlie, shall be holden, upon the complaint of the partie offended to the Lords of His Majesties Secret Council, to exhibite and produce the saids malefactors before the saids Judges, to be censured and punished corporally, or otherwise in their estates, if they be responsal at the discretion of the saids Judges. And if it shall happen the saids offenders to absent and remove themselves out of the bounds of the saids Heritors and Land-lords, and others on whom they depend, so that the saids Land-lords, Heritors, and others foresaids, may pretend that it is not in their power to exhibite the foresaids delinquents: Therefore it is statute, that if after the giving in of the said complaint before the saids Judges, and certiorating of the saids Land-lords, and others foresaids, either by citation, charge, or intimation, or any other Legal manner of way, if the saids delinquents shall be found within the bounds of the saids Land-lords, and others foresaids, haunting publickly and openly by the space of ten dayes; That then and in that case the saids Land-lords, and others foresaid, shall be esteemed as connivers with the delinquents, and be obliged under the like censure and punishment, to exhibite them to the Council.<sup>227</sup>

8. *Of Ratification of the Act of Commission anent the Ministers Provisions.*

OUR SOVERAIGNE LORD, With the advice and consent of the Estates of Parliament, ratifies and approves the Act of Commission of Surrenders and Teinds, of the date at *Holy-rud-house* the twentie sixth day of June, the yeare of God 1627. years, whereof the Tenor follows. The Commissioners after reasoning upon the lowest proportion and provision, wherewith the Ministrie serving the Cure at each Kirke, shall be provided, Have found it meet and expedient, that the lowest proportion shall be eight Chalder of victual, where victual is payed, or proportionally in silver or victual, as the Commissioners shall appoint, at the settling of the Kirke, and according to the Estate of that part of the Countrey, where the payment of the stipend shall occurre. And thinke it meet, that the said proportion of eight Chalder of victual, or proportionally in silver, as said is, shall be the lowest maintenance to each Kirke, except such particular Kirkes occurre, wherein there shall be a just, reasonable, and expedient cause to goe beneath the quantitie now determined.

AND His Majestie, and Estates foresaids, referre to the Commissioners to be chosen by his Majestie, at this present Parliament, The consideration of the reasons and causes, which may move them (after the valuation of the true worth of the Teinds of ilke Parish be closed) To determine and modifie a lesse quantitie for the Ministers maintenance, nor the quantitie foresaid of eight Chalder of victual, or eight hundred markes in victual or moneys proportionally, And what the saids Commissioners shall determine therein, the same to stand notwithstanding of this present Ratification. And also his Majestie and Estates ratifie and approve the whole particular Acts of the said Commission of Surrenders and Teinds, whereby stipends are appointed and modified by the saids Commissioners already, And ordaine the Ministers to whom the same is assigned, to have intronisation therewith: And that the Lords of Session direct letters of horning and poynding, in favour of the said Ministers conforme thereto, upon one simple charge of ten days allennerly. And also upon all other Acts to be made for plantation of Kirks by the Commis-

<sup>227</sup> This act, which ratifies and approves 1587, ch. 6, was ratified and extended by 1698, ch. 2, which see. See also Hume, vol. i. p. 326.

sioners appointed by his Majestie and Estates for that effect. And it is declared, that these presents shall be without prejudice to the titulars and others having interest to pursue for rectifying of such valuations, as are or shall be enormously undervalued, and also without prejudice of the Ministers maintenance and augmentation proportionally effeiring to the true and just worth of the Teind. &c.<sup>238</sup>

#### 9. *The Kings General Revocation.*

FORSOMUCH As OUR SOVERAIGNE LORD, the Kings Majestie, shortly after the decease of his Majesties umwhile dearest Father, King JAMES the sixt, of ever blessed memorie, for preserving of the libertie and priviledge due to his Majestie by the common Law, and by the Acts and statutes of the Kingdome; And following the laudable custome used before by his Majesties Predecessours, in making of their Revocations: Did upon the twelfth day day of October, 1625. make and give forth his General Revocation under his Privie Seale, as the same, in the selfe, at more length beares. AND HIS MAJESTIE being now present in his Royal person, within this Kingdome, and having by Gods grace, favour, and blessing, and with the General acclamation, joy, and comfort of his Subjects, accepted the Crown thereof, wherein he is gloriously inaugurate, and now holding the first Parliament of his whole Estates of the said Kingdome, with whom his Majestie hath advised and resolved anent the said Revocation. Therefore his Majestie, with consent of the three Estates, and whole body of this present Parliament, hath statute, enacted, and ordained, and by these presents, statuts, enacts and ordaines in manner following.

IN the first, his Majestie and whole Estates of Parliament revokes, casses, and annuls all Infeftments, Charters, Precepts, Confirmations, Alienations, Gifts, Donations, Rights, Securities, and other Dispositions whatsoever, of any Rents, Lands, Lordships, Baronies, Heritages, Teinds, Patronages of Kirks, Offices, Priviledges, and others whatsoever annexed to the principality, or to the Prince, who is second person of the Realme, made, convoyed, signed, or consented unto by his Majesties selfe in his minoritie, and lesse age, or by his Majesties umwhile dearest Father, for himselfe, as prince of *Scotland*; or as Father and lawful administrator to his Majestie, or to umwhile Prince *Henrie* his Majesties Brother, of worthie memorie, or by the said umwhile Prince *Henrie* himselfe, or made and granted by his Majesties said umwhile dearest Father; or any other his Majesties predecessors, Kings of *Scotland*, in their times, to whatsoever person or persons, in hurt and prejudice of the Prince, second person foresaid: or made and granted by his Majestie at any time preceeding the date hereof, unlawfully, and against the lawes of the Kingdome, the same being tried and found to be so.

ITEM, His Majestie with consent of the said Estates, revokes, casses, annuls, retroats, and rescinds, all and sundrie Infeftments, grants, dispositions, confirmations, and other rights whatsoever, made by his Majestie induring his Minoritie and lesse age, to whatsoever person, or persons, in fee, frank-tenement or otherwise, of the lands, Kirks, Teinds, patronages, offices, and others pertaining to the Lordship of *Dumfermling*, to the which his Majestie succeeded as onely Sone and Heire, to his Majesties umwhile dearest Mother Queene *Anna*, who was heritably Infeft in the said Lordship of *Dumfermling*. And sick-like, revokes all gifts, alienations, dispositions, and other rights whatsoever, made by his Majestie, or his said dearest Mother, unlawfully, and against the Lawes of the Kingdome, of the said Lordship, or of any lands, teinds, offices, Kirks, patronages, and others per-

<sup>238</sup> In reference to this act, see Connell's Treatise on Tithes, vol i. p. 344, *et seq.*

taining to the said Lordship, at any time preceeding the date hereof, the same being so found and verified before the ordinary Judge.

ITEM, His Majestie and Estates foresaid, revokes, casses, annuls, retreats, and rescinds all and sundrie Infestments, charters, gifts, donations, confirmations, alienations, pensions and other dispositions whatsoever made, convoyed, signed, or consented unto by his Majestie, or by his Majesties umwhile dearest Father, or by any other his Majesties Predecessors in their several times, to whatsoever person or persons, in any manner of way, in fee, few-ferme, frank-tennement or otherwise whatsoever, of any lands, rents, Lordships, Barronies, Patronages of Kirks, customes, annuals, fishings, liberties of fishings, burrow-mails, other rents, Castlewards, or other whatsoever annex to the Crowne, offices of Justiciary, Stewartrie, and Bailliarie, within the same appertaining there-unto, contrarie to the Acts of annexation made there-upon of before. And where lawful dissolution of the said annexation was not made by his Majestie, his said umwhile dearest Father, and his said predecessors, Kings of Scotland, in their majoritie, with consent of the three Estates of Parliament, in their several times, for setting of the same in few-ferme, with augmentation of the rental: To the effect the same may be of none avale in time comming, after the date hereof, by way of action, exception, or reply.

ITEM, His Majestie with consent foresaid, revokes, annuls, retreats, and rescinds all infestments, donations, alienations, and other dispositions whatsoever made by his Majestie, or his said umwhile dearest Father, either in their Minoritie to their hurt and lesion, or in their Majoritie against the Lawes and Acts of Parliament, to whatsoever person, or persons, of whatsoever lands, rents, annuals, and renewes not annex to the Crown, whereof his Majesties umwhile dearest Grandmother Queen *Mary*, was in possession before the Coronation of his Majesties umwhile dearest Father of happy memorie. And of all offices, such as Chamberlanaries, Bailliaries, office of Customarie made for moe yeares, but from the Exchequer, till the compt be made in the Exchequer following, Constableries, Bailliaries, Tackes and rentals of his Majesties proper lands and rents, above the space of five yeares, made and granted contrary and against the Lawes and Acts of Parliament of the Kingdome, the same being so found and tryed.

ITEM, His Majestie with consent of the Estates, revokes, casses, annuls, retreats, and rescinds, all and whatsoever Infestments, rentals, and other rights whatsoever of any part of the annex property, or of the few-fermes of whatsoever proper lands annex to his Majesties Crowne, made to whatsoever person by his Majestie, or his umwhile dearest Father; or any other his Majesties predecessors, which are made in diminution of the rental, and hurt of the patrimonie of the Crowne, where the diminution may be proved and verified.

ITEM, His Majestie revokes, casses, annuls, retreats, and rescinds all and whatsoever Infestments, alienations, and dispositions, made by his Majestie, or by his umwhile dearest Father, or any other his Majesties Noble Progenitors, of the few-ferme victual of any lands pertaining to the Crowne; which were lawfully set in few of before, for payment of the few-ferme victual: and the same few-ferme victual is set thereafter in few, or otherwise for silver payment; because such a set or few-ferme being so found and tryed, is clearly understood to be to the great abuse, hurt, and diminution of his Majesties Patrimonie and rent.

ITEM, His Majestie revokes, casses, annuls, retreats, and rescinds all Infestments, alienations, and dispositions, with all tackes, and assedations, and any other sort of conveyances whatsoever made by his Majestie, or his Majesties dearest Father, or any other His Majesties Predecessors, Kings of Scotland, against the Lawes of the Kingdome, to whatsoever persons, of his Majesties Castles, and Houses, or Places, and Roomes, whereupon the saids Castles and houses were situat, although

now demolished by injury done to his Majestie and the said Crowne. And sicklike, all Infeftments, alienations, and dispositions, and all other sort of conveyances whatsoever, of any of his Majesties medowes, woods, and parks, with all taches, assedations, and other dispositions thereof, made by his Majestie or his Predecessors foresaid, against the Lawes of the Kingdome, The same being so found and tryed.

ITEM, His Majestie revokes, retreats, and rescinds all and sundrie Infeftments, alienations, gifts, dispositions, or any other conveyances, whatsoever made by his Majesties said umwhile dearest Father, or any other his Majesties Predecessors, Kings of *Scotland*, induring their minoritie and lesse age, and not thereafter confirmed in their majoritie, to whatsoever person or persons in few-ferme or life-rent, of all lands, and annuel-rents which become in their hands, as propertie by right of the Crowne, through bastardrie, or being last Heire by recognition, or forefaulter, or otherwise with all confirmations, if any be granted in Parliament thereupon : providing that presentation to tennandries fallen by occasion foresaid, shall in no wayes come under this present Revocation, because the same being casualities, coulde not remaine in his Majestie, or his saids predecessors hand, in prejudice of the Superior of the saids tennandries, but of necessitie it behoved them to present heritable Tennants to the saids Superiours.

ITEM, His Majestie, with consent foresaid, revokes, casses, annuls, all new Infeftments, confirmations, and other conveyances whatsoever given by his Majesties said umwhile dearest Father, or any other His Majesties predecessors, Kings of *Scotland* ; to whatsoever person or persons, of any Lands, Baronies, Lordships, or other heritages whatsoever : To be holden in blensh ferme, which were holden of his Majestie or his Predecessors of before, by service of ward and reliefe. And that in so farre as the same is, or may be found and verified, to have beene granted against the Lawes and Acts of Parliament of the Kingdome, without prejudice alwayes to the heritable possessors, incase of reduction of their changed tenors to brooke and hold their said lands heritable, as they were holden before the alteration of the said holding.

ITEM, His Majestie with consent foresaid, revokes, casses, annuls, retreats, and rescinds all Regalities, and gifts of Regalities, and all confirmations, and ratifications of the said gifts and regalities, made, given, or granted, or consented to by his Majestie, or his said umwhile dearest Father, or any other his Majesties Predecessors, kings of *Scotland*, against the Acts and statutes, that no Regalities should be given in heritage, without advice & deliberation of the whole Parliament, together with all charters, infeftments, confirmations, gifts *de novo damus* : And other rights whatsoever, made by his Majestie or his Predecessors above-named, of whatsoever heritable offices, against the lawes and Acts of Parliament of the Kingdome.

ITEM, His Majestie with consent foresaid, revokes, casses, annuls, retreats, and rescinds all new creation of lands, baronies, and annexations, and unions of divers lands in fee, which are made by his Majestie, or his said umwhile dearest Father, or any other of his Majesties Predecessors, Kings of *Scotland*, in prejudice of their due service owing of before : Together with all discharges given of the said service, and sutes of court due of old : And that in so farre as the same is, or may be found to be unlawfully made or against the laws of the Kingdome.

ITEM, his Majestie with consent foresaid, revokes, casses, annuls, retreats and rescinds, all new Infeftments, made and given by his Majestie, or his said umwhile dearest Father, or any other his Majesties Predecessors, Kings of *Scotland*, of creation of Baronies, and Lordships annex to the Crowne foresaid, in favour of whatsoever person, in so farre as the same is, or may be verified, to have beene made and granted unlawfully, and against the laws of the Kingdome.

ITEM, His Majestie with consent foresaid, revokes, casses, annuls, retreats, and rescinds all Infetments, gifts, and dispositions whatsoever, set, given and granted by his Majestie, or his said umwhile dearest Father, or any other his Majesties Predecessors, Kings of *Scotland*, to whatsoever person or persons in fee, few-ferme, or life-rent, of whatsoever Hospitals, Masondieus, lands, or rents appertaining thereto: In hurt or prejudice of their consciences, and against the laws and Acts of Parliament of the Kingdome, to the end, that the said Hospitals may be reduced to the first institution, for upholding of the poore, so farre as may be done by the lawes of the Kingdome. Providing alwayes, that the rents of the Trinitie Colledge beside the burgh of *Edinburgh* and other rents assigned to the Hospital and Colledge erected by the Provest, Baillies, and Councel of the burgh of *Edinburgh*, be no wayes comprehended under this present Revocation.

ITEM, His Majestie with consent foresaid, revokes, casses, annuls retreats, and rescinds all and whatsoever gifts, pensions, gifts of fees, wages, liveries, and dispositions out of his Majesties casualities, and coffers given by his Majestie, or by any of his Majesties noble Progenitors (except such as shall be of new granted by his Majestie againe) together with all Presentations to offices and places, which by the lawes of the Realme fall under his Majesties Revocation, excepting alwayes the presentations, fees, and pensions given to the ordnary officers of the Crowne after specified, their Deputes, and Clerkes, and to the other persons after mentionate, which are declared no wayes to fall within this present Revocation: They are to say, The fees and pensions given and assigned to the Thesaurer, Comptroller, and Collector principal: And to his Majesties depute Thesaurer, and to their Deputes and Clerkes: To the Secretary principal, and his Deputs: To the Clerke of Registry, to his Majesties Advocat, & the Justice, Justice-Clerke, and their Deputs, and to the Master of Requests, and to the proctor for the poore, director of the Chancellarie, and dictator of the Rolls. And also declares the pensions and others underwritten, no wayes to fall under his Majesties Revocation, viz. The pension to the Duk of *Lennox*, his umwhile Father or Uncle: The pension to the Earl of *Morton*, with the tacke and assedation of *Orknay* and *Zetland*: The pension to sir *Robert Ker* of *Ancrum*: the pension to Mr *John Sandelands*: The pension to Sir *James Lokart*: The pension to sir *James Livingston*: The pension to sir *William Balfour*: The pension to *Halbert Maxwell*: The pension to sir *James Carmichal*: The pension to sir *James Ramsay*: And the pension to sir *John Murray* of *Revilrige*, which his Majestie and Estates declare shall stand in effect, notwithstanding of this present Revocation.

ITEM, His Majestie with consent foresaid, revokes, casses, annuls, retreats, and rescinds all gifts, pensions, and free discharges of the thirds of benefices, granted by his Majestie, or his said umwhile dearest Father, or any other his Majesties Predecessors, Kings of *Scotland*, to whatsoever person or persons, against the laws and Acts of Parliament of the Kingdome, with all tackes of thirds of benefices whereby the rentalled duetie is diminished, or where the whole benefice is set and disposed in diminution of the third thereof, in so farre as the same is contrarie to the lawes of the Kingdome, as said is.

ITEM, His Majestie with consent foresaid, revokes, casses, annuls, retreats, and rescinds all and whatsoever Infetments made by his Majestie or his said umwhile dearest Father, or any other his Majesties predecessors, of any Church-lands, Fryer-lands, Monk-lands, or common-lands, which any wayes fell, and became in their hands as propertie, and that in so far, as the same is, or may be verified to be made contrary, and against the laws and Acts of Parliament of the Kingdome, reserving alwayes the infetment made for erection and sustentation of Hospitals, and Ministers within Burrows, where there is no assignation nor stipend allowed

forth of the thirds of benefices, for sustentation of the Ministers thereof: And declares that all such Infestments of church-lands as is before exprimed, falls under this revocation, if the person or persons, and their successors, to whom the same have been disposed, have not answered and performed the cause and ends expressed in the saids Infestments, and for the which the saids Infestments was granted by his Majestie and his predecessors, as said is.

ITEM, His Majestie with consent foresaid, revokes, casses, annuls, retreats and rescinds all tackes, assedations whatsoever of any common Churches within the Realme of Scotland, made by his Majestie, or his said umwhile dearest Father, or any other his Majesties Predecessors, Kings of Scotland, in so far as the same is or may be found and verified to be made against the Lawes and Acts of Parliament of the Kingdome; Providing alwaies, that there shall be sufficient Ministers appointed to serve the saids Churches, who shall make residence, and shall be sufficiently sustained of the readiest fruits of the saids common Kirkes, according to the general order taken thereanent.

ITEM, His Majestie, with consent foresaid, revokes, casses, annuls, retreats and rescinds all gifts of Monkes portions, first fruits or fift penny of any benefices, whereunto His Majestie hath right by the Acts of Parliament made before to that end, And that in so farre as the saids gifts are or may be found to be granted against the Lawes of the Kingdome.

ITEM, His Majestie, with consent foresaid, revokes, casses, annuls, retreats and rescinds all gifts and Infestments, made, done, and consented unto, to whatsoever person or persons by His Majestie, or his Majesties said umwhile dearest Father, or any other his Majesties predecessors, Kings of Scotland, of whatsoever advocation, donation, and right of Patronage given or annexed to any Lordships, Lands or Baronie where the said Patronage, Advocation and donation of benefice pertained not before of right, but which taketh the beginning and ground from any gift and Infestment thereof made with this clause (*de novo damus*) where the purchaser of the said infestment had no right to the said Patronage, Advocation and Donation of before. And that in so farre as the same is or may be found to be granted against the Lawes and Acts of Parliament of the Kingdome.

ITEM, His Majestie, with consent foresaid, revokes, casses, annuls, retreats and rescinds all gifts, dispositions of superplus omitted of the fruits of benefice, given by his Majestie, his said umwhile dearest Father or any other his Majesties Predecessors, Kings and Queens of Scotland, in so farre as the same is or may be found and verified to be granted against the Lawes and Acts of Parliament of the Kingdome.

ITEM, his Majestie, with consent of the Estates, revokes, casses, annuls, retreats and rescinds all grants and infestments of erections, of whatsoever Abbacie or other Prelacie, in whole or in part, Temporalitie or Spiritualitie thereof, made and granted, or consented unto by his Majestie at any time preceeding the date hereof, to and in favour of whatsoever person or persons, and declares the same null and of none avail, by way of action, exception, or reply, and als his Majestie and Estates, revoke all infestments of Erections made and granted by his Majesties said umwhile dearest Father, or any of his Majesties predecessors Kings or Queens of Scotland, of whatsoever Abbacie, Priorie, Nunnerie, Preceptorie, or any other Erected benefice whatsoever, of whatsoever nature, qualitie, or condition whereof the presentation should pertain to his Majestie, if the same were not erected in a Temporal Baronie, Lordship, or Living, or of any part or pendicle thereof, either Spiritualitie or Temporalitie of the same to and in favour of whatsoever person or persons, And that in so farre as the same is, or may be verified to be granted, against the general Lawes and Acts of Parliament of the Kingdome. And to that



effect revokes, casses, and annuls, retreats and rescinds all Acts, statutes, and dissolutions of any of the saids erected benefices, Lands or Teinds of the same, whereupon the saids infeftments of erections are, or have been founded : And that in so farre as the same is or may be found and verified to be contrarie to the general Lawes, Acts of Parliament, and statutes of the Kingdome, as said is.

AND generally his Majestie, with consent foresaid, revokes, casses, annuls, retreats, and rescinds all Acts, constitutions, dispositions, grants, conveyances, ratifications, and all other things whatsoever done or consented unto by his Majestie at any time preceeding the date hereof, or by his umwhile dearest Father, or any other his Majesties predecessors, Kings and Queens of Scotland, in detriment of their soule and conscience : in hurt and detriment of the Crowne and Church, and contrarie to the Lawes and Acts of Parliament of the Kingdome. And wils and declares, that these presents shall be als amply extended, and to be of als great effect in general and special, as any revocation made by any of his Majesties Royal Predecessors before the date hereof, contained in the bookes of Parliament, which in all heads, clauses, and circumstances thereof are holden as here repeated.

AND also his Majestie, with consent of the Estates, ordaines and decernes, that albeit it shall happen his Majestie for any respect or consideration, to suffer any person or persons, to use or possesse any priviledges or possessions, lands, rents, offices, which are fallen under the compasse hereof, That it shall make no right to the users and holders thereof, but it shall be lawful to his Majestie and his successors to intromit therewith, when ever it shall please them by vertue of these present Acts and consuetudes of the Realme made before, without any obstacle, impediment or contradiction.<sup>239</sup>

#### 10. *Anent Annexation of His Majesties Propertie.*

OUR SOVERAIGNE LORD, With advice and consent of the Estates of this present Parliament, ratifies and approves the whole acts of annexation of whatsoever Lands, Lordships, and Barronies annext to the Crown by his Majesties umwhile Father, or any other his Majesties Predecessors. And farther, his Majestie and Estates foresaids, and without derogation of the former annexations, of new annexes the same to the Crown ; to remaine there-with for ever according to the conditions and provisions contained in the former Acts of annexation of Lands to the Crown ; and specially of the Act of annexation made in the dayes of King *James* the second, in the Moneth of August, 1455.

ATTOUR, His Majestie with consent foresaid, declares the right and title of Superioritie, Of all and sundrie, Lands, Baronies, Milnes, Woods, Fishings, Towers, Fortalices, Manour-places, and whole pertinents thereof, pertaining to whatsoever Abbacies, Pryories, Pryoresses, Preceptories, and whatsoever other Benefices of whatsoever Estate, Degree, Title, Name, or Designation the same be of, erected in Temporal-Lordships, Baronies, or livings, before or after the general Act of annexation of Kirk-lands, made in the Moneth of July, 1587. yeares : together with the whole Few-mails, Few-fermes and other rents and duties of the saids superiorities To be annexed, and to remaine with the Crown for ever : Reserving to such Lords and Titulars of Erections, and each one of them, who have subscribed the general surrender, the Few-mails, and Few-fermes of their saids superiorities, aye and while they receave payment and satisfaction of the summe of a thousand markes, usual money of *Scotland*, for each chalder of Few-ferme

<sup>239</sup> This act is important in connection with the history of church property after the period of the Reformation. For a commentary, see Connell on Tythes, vol. i. p. 132, *et seq.* The same note is applicable to acts 10, 11, 12, 13, 14, 15, and 17 of this Parliament.

victual over-head, and for each hundreth markes of Few-mails, and for each hundreth markes worth of all other constant rent of the saids superiorities, not consisting in victual or money, and not being naked service of Vassals, according to the tenor of his Majesties general determination, and according to the conditions therein exprest: And reserving to them and to all other Titulars of Ereccion, their propertie and proper lands to be holden of his Majestie and his Successors, in Few-ferme for payment of the Few-ferme duties, and other duties contained in the old infestments made to them, their Predecessors, and authors before the said Act of annexation. Like-as his Majestie and Estates foresaid, findes and declares that all titulars of erection without exception, shall hold their propertie and proper lands of his Majestie and his Successors, in Few-ferme, for payment of the Few-ferme duties contained in the infestments granted to them and their foresaids, before the said Act of annexation, and no otherwise. And his Majestie and Estates declares all rights and deeds whatsoever, made and granted to whatsoever person or persons preceeding the date hereof, which may prejudice his Majestie and his Successors, in the peaceable brooking, enjoying, and possessing of the saids superiorities and Few-ferme duties above-specified (excepting and reserving as said is) To be null and of none avails, force nor effect by way of action, exception, or reply.

AND sicklike, his Majestie and Estates ratifies and approves the Acts of Parliament made by his Majesties said umwhile dearest Father, of Eternal memorie: The fifteenth Parliament, Cap. 233. Intitulate, [*anent the annexation of the Kings annex propertie.*] Together with the 234. Act of the said Parliament, Intitulate [*The annex propertie may not be disponet, but in Few-ferme allanerly.*] And also the 236. Act of the same Parliament, Intitulate [*disposition of the annex propertie, made before the dissolution, or not conforme to the conditions thereof is null.*] And sicklike, the 243. Act of the said fifteenth Parliament, Intitulate, [*Anent ratifications or dispositions made in Parliament :*] And ordaines the same to have full force and effect in all time coming. And declares all deeds done in contrary thereof, to be null and of none avails by way of action, exception, or reply. IT IS alwayes declared that under this present Act, nor no clause thereof, shall no wayes be comprehended the Temporal lands, superiorities, and others pertaining to whatsoever Arch-bishops, Bishops, and their Chaptors: but that the same shall remaine with them and their successors unhurt or prejudged by this present Act.<sup>240</sup>

#### 11. OF DISSOLVTION.

FOR SO MUCH, As albeit the Lands, Lordships, Baronies, and others of old, or lately annex to the Crown, were and are, for great and weighty considerations, tending to the weale of the Crown and whole Realme, Ordained to remaine with OUR SOVERAIGNE LORD, and his Successors for ever. And not to be disposed nor annallied in fee nor life-rent, to whatsoever person or persons, without advice of the three Estates of Parliament, and for profitable and seene causes, tending to the weale of the whole Realme: Yet nevertheless, it hath been ever thought expedient in the dayes of OUR SOVERAIGNE LORDS most glorious Predecessors: And no wayes derogatorie to the conditions of the said annexations but agreeable thereto, as tending to the publique weale of the Crown and Kingdome; that the annex and proper lands should be set in Few-ferme for increase of policie and augmentation of the rental: And his Majestie being well pleased to observe and follow the order kept by his Majesties Predecessors foresaid, anent his Majesties annexed propertie.

<sup>240</sup> See note annexed to act 9 of this Parliament.

THEREFORE His Majestie with consent of his three Estates of Parliament, statutes and ordaines, that it shall be lawful to his Majestie enduring his time, to set all and sundrie lands, Baronies, Lordships, milnes, fishings, and other his Majesties proper lands both of the old and new annexed propertie, and of the temporalitie of Kirk-lands; in Few-ferme, so that it be not in diminution of his Majesties rental, gressumes, and other duties: but in augmentation thereof, providing alwayes that this present dissolution shall no-wayes be extended to the setting in Few-ferme of any of OUR SOVERAIGNE LORDS Castles, Palaces, Yards, Woods, Parks, Forrests, pastures for sheepe and nolt, and in special the Lommonds of *Falkland*, *Coalheuches*, and Offices: But the same to remaine inseparablie annex to the Crown, notwithstanding of this present dissolution. And declares that this present dissolution shall endure for the lifetime of OUR SOVERAIGNE LORD, the Kings Majestie, who now is allanerly. So that the Lands and other foresaids, which he sets in Few-ferme in his time, with the condition foresaid, shall stand perpetuallie, to and in favours of the receavers thereof, their Heirs and Successors, and after his decease, the annexations made at this present Parliament, and of before shall returne to their owne nature.<sup>241</sup>

12. *Ratification of the Acts of Interruption.*

OUR SOVERAIGNE LORD, and Estates of Parliament, ratifies and approves the Act of the Lords of Council and Session, of the date at *Edinburgh*, the penult of March, 1630. yeares: anent the interruption of the Act of prescription, in favour of his Majestie and his Successors, together with the Act of Secret Council, of the date at *Holy-rude-house*, the twentie sixth day of May, 1630. yeares. Whereby the saids Lords of Secret Council have allowed and approved the said Act: And ordaines the saids Acts to be insert in this present Ratification. And his Majestie and Estates declares the saids Acts to have the full force effect and execution of a law, statute and Act of Parliament, in favour of his Majestie and his Successors in all time comming.

*Followeth the tenor of the Act of Council and Session.*

AT EDINBURGH, the penult day of March, the year of God, 1630. yeares. The which day in presence of the Lords of Council and Session compeared personally, Sir *Thomas Hope* of *Craige-hal*, Knight Baronet, his Majesties Advocat, and presented a letter directed from his Sacred Majestie, whereof the tennor followeth.

REX. Right trustie, and right wel-beloved Cousin and Counciller, and trusty and wel-beloved, We greet you well. Whereas by Act of Parliament made in the Moneth of June, 1617. yeares, all heritable rights cled with fourtie years possession, are declared to be irreduceable in all time comming, except the same be quarrelled within the space of fourtie years: And by the same Act there is libertie granted to all persons, who might be prejudged by the said prescription of fourtie yeares already run and expired, before the date of the said Act, To intend their actions within the space of thirteen yeares after the date of the said Act. And whereas we, shortly after the decease of our dearest Father, of Eternal memorie, made our general Revocation in the Moneth of October, 1625. yeares. Which revocation we by two special Letters of declaration, one of the date at *White-hal* the twentie sixth day of Januarie, 1626. yeares: And registrate in the Bookes of Secret Council the ninth of February, 1626. yeares. And ane other of the date at *Wainsteed*, the elleventh of July, 1626. yeares: And registrate in

<sup>241</sup> See note annexed to act 9 of this Parliament.

the Bookes of Secret Council upon the twentie one of July, 1628. yeares. Have restricted to the annulling of rights of the propertie of the Crown, as well annexed as unannexed, whereof accompt hath been made in Exchequer, and of the Principalitie unlawfully disposed by our Predecessors : against the Lawes and Acts then standing, and to the annulling of erections and other dispositions of whatsoever lands, teinds, Patronages, and Benefices formerly belonging to the Kirk, and since annexed to the Crown. And of any other lands and Benefices mortified and devoted to pious uses : And of Regalities and heritable offices, and of the change from the ancient holding of ward and reliefe to blensh or taxt ward, since the year of God, 1540, yeares. And because, We were unwilling to enter in processe with our Subjects anent the premisses ; but rather desired to take a faire course with all such as would voluntarily treat with Us or our Commissioners there-anent.

THEREFORE We were pleased by our Commission of the date at *White-hal* the seventeenth day of January, 1627. yeares, to appoint certaine of our Nobilitie, Clergie, Gentry, Barons, and Burrowes, to be commissioners, to treat and deal betwixt Us and our Subjects, anent the premisses. And albeit the said Commission hath made a good progresse in the said matter of erection and teinds : and that a great number of our subjects, having interest therein, have subscribed to us general submissions, whereupon, We have given forth our several determinations for the good of our Subjects, and establishing of the perpetual quietnesse, and peace of that our ancient Kingdome ; Yet it is certaine that many of these who have interest in erections and teinds, lye forth, and have not subscribed the said general submissions. Like-as also the remanent points of our said commission anent the Patronage of Kirkes, rights, and infeftments of our Propertie, and Principalitie, Regalities, Heritable offices, and Changed tenours of holding in blensh or taxt-Wards, are not as yet begun to be handled and treated, and cannot be possibly finished and closed, before the expiring of the time and yeares of interruption, allowed by the said Act. And because, We will not suffer our selfe or our Successors to be prejudged by delay of the execution of the said commission of the lawful actions competent to us and them, for reducing of such rights of the premisses, to the which We have undoubted interest. And seeing a multitude cannot be commodiously summoned and warned personally, or at their dwelling places in so short time as is to run of the said time of prescription. THEREFORE and for preservation of our rights and actions competent to us and our Successors anent the premisses, Necessary it is, that some solemne Act be done by us, to testifie our will and resolution, to prosecute our said actions in the owne time, if the same be not taken away and removed by the said commission, which we think cannot be more properly and conveniently done, nor by inserting of this our declaration in your Bookes of Session, and directing of Letters of publication thereupon : certifying all our Lieges who have interest in the premisses, by open proclamation at the Market-crosse of our Burgh of *Edinburgh*, and other places needful, of this our pleasure, will, and declaration. And that the same be declared by you, to have the strength, force, vertue, and power of a legal and perfect interruption. AND THEREFORE, We require you immediately after the sight hereof, to cause insert these presents in your Bookes of Session, and to declare the same to have the force of a Legal and lawful interruption, and to direct Letters of publication thereupon, in forme as effeires. Which, not doubting you will doe, We bid you, farewell. From our Court at *White-hal*, the twenty ninth day of November, 1629. yeares. With the which Letter, Tenor, Contents, and desire thereof, after that the same with the Act of Parliament whereunto it is relative,

was read in their whole presence; The saids Lords being well and ripely advised, and having considered the Justice and Equitie of his Majesties will and pleasure therein contained: they have ordained and ordaine the said letter and declaration therein contained, to be insert, and registrate in their Bookes of *Sederunt*: and ordaine Letters of publication to be direct and passe thereupon, certifying all his Majesties Lieges who have interest, by open Proclamation at the Market-cross of *Edinburgh*, and other Market-crosses of the Kingdome, where the Lands, Baronies, and others underwritten lye: or where the persons and subjects dwell and remaine, against whom the said declaration is to have the effect of a Legal interruption, in manner following. AND by open Proclamation at the said Market-cross of *Edinburgh*, Pier and Shore of *Leith*, for all such of his Majesties Lieges, who are forth of this Realme, Of his Majesties pleasure, will, and declaration, and of the saids Lords their decreet, and authoritie interponed thereto. Like-as the saids Lords declare, That the said declaration registrate, as said is, and to be published in manner foresaid, shall have the strength, force, and power of a Legal and perfect interruption, against all persons having interest: and that in so farre allanerly as may be extended to the particulars following: To wit, to his Majesties annexed propertie, and his Majesties propertie unannexed, whereof the fermes duties or Few-fermes have been compted in his Majesties Exchequer, since the Moneth of August, 1455. yeares, and unlawfully disposed by his Majesties Predecessors, against the Acts of Parliament and Lawes of the Kingdome: and to the principalitie unlawfully disposed by his Majesties Predecessors, against the Acts of Parliament and Lawes of this Kingdome, and to the reduction of whatsoever erections, of whatsoever benefices, spirituality or temporality thereof, against the Laws and Acts of Parliament: and to the reduction of whatsoever patronages of Kirkes pertaining to his Majestie and his Predecessors, and unlawfully disposed by them against the Acts of Parliament: and against unlawful dispositions of whatsoever lands, Teinds, or Rents doted to Hospitalities, or Mason-dieus, and unlawfully disposed against the Acts of Parliament: and against Regalities and heretable offices unlawfully disposed, contrarie the Acts of Parliament: and against all changed tenors of holding from ward to blensh or taxt ward, granted by the Kings and Princes in their minorities, and not granted or ratified by any King or Prince being Major: with this declaration, like-as the saids Lords declare, that the same shall not prejudice any person whatsoever of their lawful defence competent to them, against any Action to be intended hereafter, at his Majesties instance and his Successors; except in so far as concerne the said Act of prescription, whereupon the saids Lords declare, that no exception shall be founded in prejudice of his Majestie and his Successors, concerning the premisses.

*Followeth the Tenor of the Act of Secret Council.*

*APUD* Holy-rude-house *vigesimo sexto die mensis Maij, Anno Domini millesimo sexcentesimo tricesimo.* THE Which day, in presence of the Lords of Secret Council, compeared personally Sir *Thomas Hope, of Craige-hall*, Knight Baronet, his Majesties Advocat, and gave in the Act of Session underwritten, made in favour of his Majestie, anent the Interruption of the Act of prescription, and desired the same to be insert and registrate in the books of privie Council, and the Lords authoritie to be interponed thereto: Which Act of Session being read, heard, and considered by the said Lords, and they being there-with, and with the desire of the said Advocat well advised: The Lords of Secret Councell thinke the course

and order taken by the said Lords of Session for interrupting of the said Act of prescription, to be just and reasonable: And therefore, they ordaine the said Act of Session to be insert and registrate in the bookes of privie Council, whereof the tenor followeth.

At *Edinburgh*, the penult day of March, the yeare of God, 1630 years: The which day in presence of the Lords of Councell compeared personally Sir *Thomas Hope* of *Craige-hall*, Knight Baronet, his Majesties Advocat, and presented a Letter direct from his sacred Majestie, whereof the tenor followeth.

CHARLES REX: Right trustie, and right well-beloved Cousin, and Counciller, and right trustie and well-beloved, We greet you well. Whereas by Act of Parliament made in the moneth of June, 1617 yeares, All heritable rights cled with fourtie yeares possession, are declared to be irreduceable in all time coming, except the same be quarrelled within the space of fourtie years: And by the same Act there is libertie granted to all persons, who might be prejudged by the said prescription of fourtie years already run and expired before the date of the said Act; To intend their actions within the space of thirteene yeares after the date of the said Act. And whereas We, shortly after the decease of our dearest Father of eternal memorie, made our general revocation in the moneth of October, 1625. Which revocation we by two special Letters of declaration, one of the date at *White-hall* the twenty sixth day of January, 1626 yeares, And registrate in the bookes of our secret Council the ninth day of February, 1626 years; And another of the date at *Wainsteed* the eleventh day of July, 1626 yeares, and registrate in the bookes of our secret Council upon the twentie one day of July, 1626 yeares; Have restricted to the annulling of rights of the propertie of our Crowne, as well annexed as unannexed, whereof accompt hath beene made in our Exchequer; And of the principality unlawfully disposed by our Predecessors against the lawes and Acts then standing; And to the annulling of erections and other dispositions of whatsoever lands, teinds, patronages, and benefices formerly belonging to the Kirke, and since annexed to the Crowne; And of any other lands and patronages, which any wayes should justly belong to the Kirke or Crowne; and of whatsoever lands and benefices mortified and devoted to pious uses; And of Regalities and heritable offices; And of the change of holdings from the ancient holding of ward and reliefe to blensh and taxt ward, since the yeare of God, 1540 yeares. And because We were unwilling to enter in processe with our Subjects anent the premisses, but rather desired to take a faire course with all such as would voluntarily treat with Us or our commissioners there-anent.

THEREFORE We were pleased by our commission of the date at *White-hall* the seventeenth day of January, 1627 yeares; To appoint certain of our Nobilitie, Clergie, Gentry, Barons, and Burrowes, to be commissioners to treat and deal betwixt Us and our Subjects, in the premisses. And albeit the said commission hath made a good progresse in the said matter of erections and teinds, and that a great number of our subjects having interest therein, have subscribed unto us generall submissions, whereupon We have given forth our several determinations for the good of our subjects, and establishing the perpetual quietnesse and peace of that our ancient Kingdome; Yet it is certain, that many of these who have interest in erections and teinds, lye forth, and have not subscribed the said general submissions: Like-as also the remanent points of our said commission anent the patronage of Kirks, rights, infestments of our Propertie and Principallitie, Regalities, Heritable offices, and Changed tenour of holdings in blensh, or taxt Wards,

are not as yet begun to be handled and treated, and cannot possibly be finished and closed, before the expiring of the time and yeares of the interruption allowed by the said Act. And because we will not suffer our self nor our successors to be prejudged, by delay of the execution of the said commission, of the lawful actions competent to Us and them for reducing such rights of the premisses, unto the which we have undoubted interest; And seeing a multitude cannot be commodiously summoned and warned personally, and at their dwelling places, in so short time as is to run of the said time of prescription. Therefore, and for preservation of our rights and actions competent to Us and our successors anent the premisses, necessarie it is, that some solemne Act be done by Us, to testifie our will and resolution, to prosecute our said actions in the owne time, if the same be not taken away and removed by the said commission, which we thinke cannot be more properly and conveniently done, nor by inserting of that our declaration in your books of Session, and directing of Letters of publication thereupon, Certifying all our Lieges who have interest in the premisses, by open proclamation at the market crosse of *Edinburgh*, and other places needful, of that our pleasure, and declaration: And that the same be declared by you, to have the strength, force, power, and vertue of a legall and perfect interruption. And therefore, We require you immediately after the sight hereof, to cause insert these presents in your bookes of Session, and to declare the same to have the force of a legall and lawful interruption, and to direct Letters of publication thereupon, in forme as effeir is Which not doubting you will doe, We bid you fare-well. From our court, at *White-hall*, the twentieth day of November, 1629 yeares. with the Which Letter, tenor, contentes, and desire thereof, after the same with the Act of Parliament whereunto it is relative, were read in their whole presence, The said Lords being well and ripely advised, and having considered the justice and equitie of his Majesties will and declaration contained therein, They have ordained, and ordaine the said letter and declaration therein contained to be insert and registrate in their bookes of *Sederunt*; and ordaine Letters of publication to be direct and passe thereupon, certifying all his Majesties Lieges, who have interest, by open proclamation at the market Crosse of *Edinburgh*, and other market Crosses of the Kingdome, where the lands, Baronies, and others lye, or where the persons and subjects dwel and remaine, against whom the said declaration is to have effect of a legal interruption in manner following. And by open Proclamation at the said market Crosse of *Edinburgh*, Pier and shore of *Leith*, for all such of his Majesties subjects as are forth of this Realme, Of his Majesties pleasure, will and declaration, and of the saids Lords their decreet and authoritie interponed thereto. Likeas the saids Lords declare, That the said declaration registrate, as said is, and to be published in manner foresaid, Shall have the strength, force and power of a legall and perfect interruption against all parties having interest, and that in so farre alennerly as may be extended to the particulars following, viz. To his Majesties annexed propertie, and his Majesties propertie unannexed, whereof the ferme duties or few-fermes have beene compted in his Majesties Exchequer, since the moneth of August, 1455. yeares, and unlawfully disposed by his Majesties Predecessors against the Acts of Parliament, and Lawes of the Kingdome: And to the principallitie unlawfully disposed against the Acts of Parliament and Lawes of this Kingdome: And to the reduction of whatsoever erections, of whatsoever benefices, Spiritualitie and Temporalitie thereof unlawfully dispced against the Laws and Acts of Parliament: And to the reduction of whatsoever patronages of Kirks, pertaining to his Majestie and his Predecessors, and unlawfully disposed

by them against the Acts of Parliament: And against unlawful dispositions of whatsoever Teinds, Lands, and Rents doted to Hospitals, and masondieus, and unlawfully disposed against the Acts of Parliament: And against Regalities and Heritable Offices unlawfully disposed, contrary to the Acts of Parliament: And against all changed tenours of holdings from ward to blensh or taxt ward, granted by the Kings and Princes in their minorities, and not granted or ratified by any King or Prince being major. With this declaration like-as the saids Lords declare, that the same shall not prejudice any person whatsoever of their lawful defences competent to them, against any action to be intended hereafter at his Majesties instance, and his successors, except in so far as concerns the said Act of prescription, whereupon the saids Lords declare, that no exception shall be found in prejudice of his Majestie, and his Successors concerning the premisses.<sup>242</sup>

### 13. *Anent Regalities of Erections.*

OUR SOVERAIGNE LORD, With advice and consent of the Estates of Parliament, Ratifies and approves that head and article of the Act of Parliament made in the moneth of July, 1587. years, 29. cap. anent the annexation of the temporalitie of benefices to the Crown, whereby the right and priviledge of regaltie, which pertained to whatsoever Abbacie, Priorie, Prioresse, or other benefice whatsoever, is annexed to the Crown: with this declaration, That the heirs of the vassals of the heritable tennants shall be entred by briefes forth of his Majesties Chancelarie, to be direct to the Provest and Baillies of the Burrowes of the saids Regalities. But prejudice alwaies to heritable Baillies and Stewarts of the saids regalities, their heirs and successors, of their rights and infestments granted to them of the saids Bailleries and Stewartries of Regaltie, which shall remaine with them in the same condition they were before the same Act of annexation, except in the change of their Superior, viz. in the Kings Majestie, and his Successors, who in all times thereafter shall be their superiour, as in the said Act of Parliament of the date foresaid, at more length is contained.

AND farther, his Majestie, with consent of the Estates of Parliament, casses, annuls, retreats and rescinds all rights and titles made and granted by his Majestie, or his Majesties umwhile Father, or by umwhile Queene *Marie* his Grand-mother, to whatsoever person or persons, of the right and priviledge of Regaltie, pertaining to whatsoever Abbot, Pryor, Pryoresse, Preceptor, or other beneficed person whatsoever, at any time preceeding the date hereof: And declares the right and title of all and whatsoever Regalities within the Kingdome, which pertained to whatsoever benefice particularly or generallie above specified, at any time preceeding the general annexation of Kirk-lands, without respect to any exception mentioned in the said Act of annexation, to pertaine to his Majestie and his Successors in all time comming. Reserving alwaies to all heritable Baillies and Stewarts of the saids Regalities, their rights and infestments of the saids Bailleries and Stewartries, granted to them by the saids beneficed persons, at any time preceeding the date of the erections of the saids Abbacies, Priories, and others foresaid in Temporal Lordships. And it is declared, that these presents shall no waies be extended to the right of Regaltie of whatsoever Lands, and Superiorities, pertaining to the Arch-bishops and bishops of this Kingdome, by vertue of their gifts and provisions, granted to

<sup>242</sup> See note annexed to act 9 of this Parliament.



them or their predecessors thereupon, which shall remaine with them unhurt or prejudged by this present Act.

AND also it is declared, decerned and ordained, that the lands and Baronie of *Broughtoun*, comprehending the Towns, lands, burgh in baronie, milnes, and others mentioned in the infeftments granted by his Majestie under his Highnesse great Seale, To his Highnesse right trustie Cousin and Counseller *Robert Earle of Roxburgh*, of the date, the                      day of                      one thousand, six hundred, thirtie years, shall not be comprehended herein, excluding the same al-lutterly there-from, To remaine with the said Earle, his Heires and Successors, after the forme and tenour of the Infeftments made to him and his authors of the same.<sup>243</sup>

#### 14. *Anent Superiorities of Kirk-lands.*

OUR SOVERAIGNE LORD, With advice and consent of the Estates of Parliament findes, declares, and ordaines, that his Majestie and his Successors, have and shall have good and undoubted right to the superiorite of all and sundrie Lands, Baronies, Milnes, woods, fishings, Towers, Fortalices, manour places and whole pertinents thereof, pertaining to whatsoever Abbacies, Priors, Priories, Preceptories, and whatsoever other Benefices, of whatsoever Estate, degree, Title, Name, or designation the same bee of, Erected in Temporal Lordships, Baronies, or livings, before or after the general annexation of Kirk-landes, made in the Moneth of July, one thousand, five hundred, fourscore and seven years, And to the whole casualities of the saids superiorities, not disposed before the date of the general Commission, which is of the date at *White-hall*, the seventeenth of Januarie, 1627. yeares : And also to the whole Few-mails, Few-fermes, and other rents and duties of the saids superiorities, of all yeares after the date of the said Commission : Reserving to such Lords and Titulars of Erections who have subscribed the general Surrender, the Few-mails, and Few-fermes of their saids superiorities, ay and while they receive payment and satisfaction of the sum of one thousand markes usual money of Scotland, for ilk Chalder of Few-ferme victual over-head ; And for ilk hundreth markes of Few-mails, and for ilk hundreth markes worth of all other constant rent of the saids superiorities (not consisting in victual or money, and not being naked service of Vassals) according to the tenour of his Majesties general determination, and conform to the conditions therein contained, which are holden as repeated and exprest here. And sicklike with this declaration, that these presents shall be without prejudice to the saids Lords, and Titulars of erection, of whatsoever Lands, Baronies, Woods, Fishings, Manour-places, Milnes, Multors, and others of the said erected Benefices, pertaining to those who have Surrendred, as said is, in propertie ; And whereof they had the right of propertie, the time of the said general surrender acquired by them, either before or since the saids erections, by whatsoever maner of way according to the Lawes of the Kingdome. Providing they hold the said propertie of his Majestie and his Successors, as the same were holden before the date of the saids erections, And for payment of the Few-mails, Few-fermes, and other duties mentioned in the old Infeftments of the saids lands before the date of the saids erections.

AND His Majestie and Estates declare all rights and deeds whatsoever granted by his Majestie, or his umwhile dearest Father, or Grand-mother, Queene *Marie*,

<sup>243</sup> See note annexed to act 9 of this Parliament.

to whatsoever Titulars of Erections which may prejudice his Majestie and his Successors, in the peaceable brooking, joying and possessing of the saids Superiorities, and whole benefit thereof above-specified (under the exceptions alwaies and provisions above-written) To be null, and of none avail, force nor effect by way of action, exception, or reply: And also findes and declares that the saids Lords and Titulars of erection shall hold their propertie and proper lands, Of his Majestie and his Successors, as the same were holden before the date of the saids erections. And for payment of the Few-mails, Few-fermes, and other duties mentioned in the old Infeftments of the saids Lands granted to them and their authors before the date of the saids erections: IT IS alwaies provided, and declared, that these presents, nor no clause therein contained, shall be extended to the superiorities of whatsoever lands, Baronies, and others, pertaining to whatsoever Archbishop, Bishop, and their Chaptors: but that the same shall remaine with them and their Successors unhurt or prejudged by this present Act.<sup>244</sup>

15. *Anent his Majesties Annuitie of Teinds.*

OUR SOVERAIGNE LORD, And Estates of Parliament, Ratifies and approves the Act of the General Commission of Teinds and Surrenders, Of the date at *Holy-rude-house* the twenty ninth of May, 1627. years, whereby it is found and ordained, That his Majestie and his Successors shall have the constant rent and dutie following, payed out of the Teind Bolls of Victual, And out of the Bodie of the rest of the Teinds of the Kingdome redacted in money, Except the Teind-bolls and silver payed to the Bishops, being the rent pertaining to them, in the Estate wherein the same is presently payed or presently payable to them: And except the Teind-bolls and silver payed to Ministers in name of stipend for serving the cure; and to the Colledges, Hospitals, and other pious uses: That is to say, Of every Teind-boll of the best Wheat ten shillings; Of everie Boll of the best Teind-bears, eight shillings; And of everie Boll of the best Teind Oates, meale, pease and rye, six shillings: And where oates are of that nature that they will not render above half meale, the rent to be three shillings: And where the bolls of victual are of inferiour goodness, worth and price nor the best, That his Majesties annuitie forth thereof shall be modified proportionally. And where the rent doth not consist in victuall but in money, that his Majestie and his Successors shall have of every hundreth marks of Parsonage and Vicarage teind, not consisting in victual rent, the summe of six markes money. Together with the Act of the said commission of the date at *holy-rudehouse*, the eight of August, 1628. Whereby it is ordained, that the payment of the said annuitie shall have the beginning of the crop and yeare of God, 1628. Together with another Act of the said commission, of the date at *Holy-rudehouse* the fourteenth day of July, 1630. Whereby letters of horning are ordained to be direct at the instance of his Majesties Thesaurer, for payment of the said annuitie of the crops, 1628 and 1629. And yearly in time comming. Together with an Act of the convention of the Estates, of the date at *Holy-rudehouse* the twentie ninth of July, 1630 yeares, whereby the said Estates have ratified and approved the said Act of the date and tenour foresaid, anent letters of horning, to be direct at the instance of his Majesties thesaurer, for payment of his Majesties annuitie of the crops and years of God, 1628 and 1629. And yearly in time comming. And sicklike ratifies and approves the Act of the

<sup>244</sup> See note annexed to act 9 of this Parliament.

said commission, of the date the twentieth third of March, 1631 years. Whereby it is ordained, that in all teinds which shall be unvalued betwixt and the first of August thereafter, that the heritor shall pay his just teind according to the fifth part of the present rent, ay and while the constant rent be determined. And whereby it is statute and ordained, that his Majestie shall have right to uplift his annuity according to the said fifth part of the present rent, ay and while the said constant rent be determined, Together with another Act of the said Commission of tiends and surrenders of the date at Holy-rudehouse the fourteenth of December, 1631 yeares. And ratified by the Lords of secret Councell upon the twentieth day of the said month of December. Whereby it is statute and ordained for an *interim*, that the annuitie of teinds, consisting in victual, shall be payed to his Majestie of all yeares by gone, and in time coming conforme to the tenour of the said last Act: And that according to the just and true prices of the victual in ilk part of the Country, compting for ilk hundred markes of the prices of the said victual being redacted in money six markes for his Majesties annuitie. Which Act is thereafter upon the twentieth of December, 1631. ratified by the Lords of secret Councel, And letters of horning and poynding ordained to be direct thereupon, and thereafter ratified by the Lords of Exchequer upon the twentieth third of the said moneth of December. And his Majestie and Estates Statute and ordaine the said annuitie forth of the teinds to be payed to his Majestie and his Successors, of the said crop and year of God, 1628. And of all yeares sensine and in time comming. And that aswell out of the unvalued as valued teinds conforme to the tenours of the said Acts of convention, secret Councel and Exchequer. And ordaines letters of horning and poynding to be direct by the Lords of his Majesties Exchequer at the instance of his Majesties Thesaurer, principal and depute, for payment of the said annuitie of all years by gone and in time comming. And ordaines the Lords of his Majesties Exchequer, to sit at all convenient times for granting and discussing of suspensions, touching the said annuitie of teinds. It is alwaies declared, that the last clause and article contained in the said Act of Annuities, whereby the Commissioners thinke fit that the said annuitie of teinds shall bee annexed to the Crowne, is no waies ratified by this present Act, nor no clause thereof. And that his Majestie takes to his own gracious consideration what to do thereanent in whole or in part, as his Majestie in his royall wisdom shall thinke most expedient. And whatever his Majestie shall do now or hereafter thereanent, shall be as valid and effectual, as if the same had been particularly expressed in this present Act.<sup>245</sup>

#### 17. *Anent the Rate and Price of Teinds.*

FOR-SO-MUCH AS OUR SOVERAIGNE LORD out of his Royal and Fatherly care, tendering the publique good of this his ancient Kingdome, did immediately after his happie attaining to the Crown, publish and give forth his Royal declaration anent the reforming of the abuses used in leading of teinds, wherein his Majesties umwhile Father, of Eternal and blessed memorie, laboured so much in his time, and for provision and maintenance of Kirks, and other pious uses forth of the saids teinds: And now his Majestie being by Gods gracious providence present in his Royal person within this his Majesties ancient Kingdome, and holding

<sup>245</sup> See Note annexed to act 9 of this Parliament. In reference to this act, see also Erskine, b. ii. tit. x. § 39.

this his first Parliament of his whole Estates of the same, with whom his Majestie hath advised and resolved, to put that glorious work anent the Teinds to a full perfection.

THEREFORE, His Majestie with consent of the three Estates, by these presents statutes, ordaines, and declares, that there shall be no Teind-sheaves, or other Teinds, Parsonage or Vicarage led and drawn within the Kingdome, but that each heritour and Life-renter of Lands shall have the leading and drawing of their owne Teind, the same being first truly and lawfully valued, and they paying therefore the price after-specified, incase they be willing to buy the same : or otherwise paying therefore the rate of Teind after-specified. Like-as his Majestie and Estates find and declare, that the just and true rate of Teinds, is and shall be the fifth part of the constant rent which each land payeth in stock and teind where the same are valued joyntly, and where the Teinds are valued apart and severally, that the just rate thereof, is and shall be such as the same is already or shall be hereafter valued, and proved before the saids Commissioners or Sub-commissioners, deducing the fifth part thereof for the ease of the heritors, reserving alwayes liberty to such as shall finde themselves enormously hurt by the leading of the saids Valuations, to pursue for rectifying of the same, before the Commissioners appointed by his Majestie and Estates for that effect. And also his Majestie, with consent of the three Estates, findes and declares, that the price of all Teinds, which may be sold and annalied, consisting either in money, victual, or other bodies of goods, is and shall be ruled and estimate according to nine yeares purchase, the prices of victual and other bodies of goods whereof the Teind consists, being redacted in money, according to the worth and price of victual and goods in each part of the Countrey, to the which the same is, and shall be prized and estimate by his Majesties Commissioners already appointed or to be appointed to that effect. And findes and declares that each Heritor in the Kingdome, being willing to buy his owne Teind from the Titulars, having power to sell the same, shall be obliged to buy the Teinds of his own lands, except so much as shall be locally assigned to the minister, serving the cure of the Kirk, for his maintenance, and to pay the prices foresaid, betwixt and the terme of Martinmasse, in the yeare of God, 1635. zeares, where the Valuation of the Teinds is made and approved before the date hereof, and where the same is not yet valued and approved within the space of two yeares after the same be valued and approved by the Commissioners, to be appointed by his Majestie and Estates to that effect : after the expiring of the which time, his Majestie and Estates declare that the saids titulars shall not be compelled to sell the same, except they doe it of their own good will and consent. With this declaration alwayes, that incase the impediment of not selling, induring the space foresaid, flow from the Titular by reason of his minority or other inhabilitie, in that case the Heritor who offereth himselfe ready to buy his own Teind within the space foresaid, shall have place so soone as the impediment is removed, to buy his Teinds, notwithstanding of the expiring of the yeares and space above-expressed. And it is declared, that if the Heritor be minor, and his Tutors neglect the buying of his Teinds within the space foresaid, the minor shall have action against his Tutors *pro damno & interesse*, but no action to compel the titular after the expiring of the space foresaid, for selling of the saids Teinds : And where the saids Teinds are coft by the Heritors, as said is, finde that the Heritor shall be obliged to give to the Life-renter of the saids lands, having right thereto by contract of marriage, Life-rent, Infestment, Conjunct-fee, or Reservation forth of the Infestment of Fee, the leading of the Teinds of their saids Life-rent Lands, for payment of the rate of the Teind of the same.

And sicklike finds that in all cases where Teinds are not coft, that the Heritors or Life-renters of Lands, who have the leading of their own Teinds by themselves, their Tennants, and others in their name, shall be obliged to pay to the Titulars of Teinds the yearly rate thereof, according to the valuation of the same made or to be made, and to give securitie thereof, according to the order set down and prescribed by the Commissioners of surrenders and Teinds, or to be set down by the Commissioners appointed, or to be appointed by his Majestie with consent of the Estates of this present Parliament, deducing so much thereof as shall be assigned to the Minister for his maintenance. IT IS alwayes declared, whether the saids Teinds be sold or not, his Majestie shall have his annuitie forth of the same, according to the Tenor of the Act of Annuitie: And because sundrie questions may arise both anent the Valuation of Teinds, and Price of the same in divers parts of the Countrey, and anent the securities to be made by the Titulars to the Heritors who buy their Teinds, and by the Heritors to the Titulars of the price to be payed for the same where the Teinds are coft, or for payment of the rate of Teind where the same is not coft: And sicklike anent the provision of the Kirkes, with competent maintenance, and for division of the price of Teinds betwixt the Heritors and Life-renters, and rectifying of Valuations already led to the enorme hurt and prejudice of these, having interest. THEREFORE His Majestie and Estates have referred, and refer the determination of the saids particulars, and all others concerning the Teinds to the Commissioners appointed by his Majestie and Estates in this present Parliament. IT IS alwayes declared, that this present Act shall be no farther obligatory against whatsoever Arch-bishops, Bishops, Parsons, Vicars, and other beneficed persons, being Ministers, nor their Successors, but according to the provisions and conditions expressed in the submission, made by the Bishops to his Majestie, which is of date the                      day of                      1628. yeares, and registrate in the Bookes of Commission of Surrenders and Teinds, upon the thirteenth day of July, 1631. yeares: Which provisions and conditions are holden as expressed herein. And also it is declared, that the Vicarages of each Kirk being a several Benefice and Title from the Parsonage, shall be severally valued, to the effect the Titulars or Ministers serving the cure, who have right to the saids Vicarages, be not frustrate of the true worth of the saids Vicarages.<sup>246</sup>

19. *Commission for Valuation of Teinds not valued, rectifying the Valuations of the same already made, and other particulars therein contained.*

FOR SO MUCH As OUR SOVERAIGNE LORD, immediately after his happy attaining to the Crown of this his Ancient and Native Kingdome, did out of his Royal and Fatherly care to the publique good thereof, give forth his Royal declaration, anent the reforming of the abuses used in leading of teinds, and for provision and maintenance of Kirks and other pious uses forth of the saids teinds. And also for restoring the Crown to the superiorities of whatsoever benefices and temporalities thereof erected in temporal livings, and against other prejudices and detriments done to the Crowne, mentioned in the said declaration. And albeit his Majestie hath beene still urging and following the performance of the particulars foresaid these five yeares by-gone, or thereabout, by Commissions direct by his Majestie under his great Seale, to that effect, wherein there hath beene good progresse made, yet the same could not take a full end without the authoritie of a Parlia-

<sup>246</sup> See note annexed to act 9 of this Parliament. See also Connell on Tythes, vol. i. p. 301, *et seq.*, and Mr M'Allan's note on Ersk. b. ii. tit. x. § 31.

ment: Like-as his Majestie out of his earnest and tender affection to the publique good of this his native Kingdome; And for advancing the saids great and glorious works intended by his Majestie, as said is, hath taken the pains to come hither in his Royal person, where his Majestie being present in solemne Parliament, with his three Estates of his said ancient Kingdome: Have resolved and concluded upon the particular Acts and Statutes after following, tending to the publique good, peace, ease, and comfort of his said Kingdome and subjects thereof: *viz.* His Majestie and Estates foresaid have ratified the Act of Commission of surrenders and teinds, of the date at *Holy-rude-house*, the twentieth sixth day of June, 1627. yeares, whereby it is found meete and expedient, that the lowest proportion for maintenance of Ministers shall be eight chalder of victual, or eight hundreth markes proportionally, except such particular Kirkes occurre, wherein there shall be a just, reasonable, and expedient cause to go beneath the foresaid quantitie; And hath referred the consideration of the reasons and causes thereof to the Commissioners to be chosen by his Majestie, with consent of the Estates in manner contained in the said Act. Like-as also his Majestie and Estates by another Act and Ordinance, hath statute, ordained, and declared that each Heritor and Life-renter of Lands *respective*, shall have the leading and drawing of their owne teinds, the same being first truely and lawfully valued, and they paying therefore the price after-specified, in-case they be willing to buy the same, or otherwise, for the yearly payment of the rate of Teinds after-specified. Like-as his Majestie and Estates have by the said Act, found and declared, that the true and just rate of Teind is, and shall be the fifth part of the constant rent, which ilk land payes in Stock and Teind where the same are valued joyntly. And where the Teinds are valued apart and severally, that the just rate thereof is and shall be such, as the same is alreadie by vertue of the former general commission of Surrenders and Teinds proved and valued to, Or else shall be hereafter valued and proved before the Commissioners to be appointed by his Majestie with consent of the Estates, deducing the fifth part thereof for the ease of the Heritors: Reserving alwaies libertie to such as shall finde themselves enormely hurt by the leading of the saids valuations, to pursue for rectifying of the same before the saids Commissioners to be appointed by his Majestie and Estates foresaid: like-as his Majestie and Estates have by the said Act found and declared, that the price of all Teinds which may be sold and annalied, consisting either in money, victual, or other bodies of goods, is, and shall be ruled and estimate according to nine yeares purchase. The prices of victual and other bodies of goods, whereof the Teinds consist being redacted in money according to the worth and prices of victual and goods in ilk part of the Countrie, To the which the same is and shall be prized and estimate by the said former Commissions of Surrenders and Teinds, or by the Commissioners to be appointed by his Majestie, with consent of the Estates: And also have found and declared, that ilk Heritor in the Kingdome being willing to buy his own Teind from the Titulars, having power to sell the same, shall be obliged to buy the Teynd of his own Lands, except so much as shall be locally assigned to the Minister serving the Cure for his maintenance: And to pay the prices foresaid to the Titulars betwixt and the particular times and diets exprest in the said Act. And also have found that the Heritors shall bee obliged to give to the Life-renter of the lands, the leading of their own teinds for payment of the rate of Teind of the same. And also have found, that in all cases where Teinds are not coft, that the Heritors or Life-renters of lands who have the leading of their own Teinds by themselves, their tennants, and others in their names, shall be obliged to pay to the Titulars of the saids Teinds

the yearly rate thereof, according to the order set down and prescribed by the former Commissions, or to be set down by the Commissioners to be appointed by his Majestie, with consent of the Estates, deducing so much thereof as shall be assigned to the Ministers for their maintenance.

AND Because sundrie questions may arise anent the valuations of Teinds and prices thereof, and anent the securities to be made by the Titulars to the Heritors who buy their Teinds; and by the Heritors to the Titulars of the price to be payed for the same, when the Teinds are coft, or for payment of the rate of Teind where the same is not coft; And anent the provisions of the Kirkes, with competent maintenance, and other particulars mentioned in the said Act. THEREFORE His Majestie and Estates, by the said Act did referre the determination thereof to the Commissioners to be appointed by his Majestie and Estates, With these declarations alwaies, that his Majestie shall have his annuitie payed forth of the Teinds according to the tenour of the said Act of annuitie; And that the Archbishops, Bishops, Parsons, Vicars, and other beneficed persons being Ministers, and their Successors, should be no farther obliged in any of the premisses, But according to the provisions and conditions exprest in the submission made by the Bishops to his Majestie, which is of the date the                      day of                      1628. years. And registrate in the saids Books of Surrenders and Teinds, upon the thirteenth of July 1631. yeares. And that the Vicarages of ilk Kirk being a several Benefice and Title, should be severally valued, to the effect the Titulars and Ministers serving the Cure, who have right to the saids Vicarages, shall not bee frustrate of the true worth of the saids Vicarages. And sicklike, His Majestie and Estates by another Act have found and declared, that his Majestie and his Successors have and shall have undoubted right to the superiorities of whatsoever erections, Few-mails, Few-fermes, and other casualities thereof, Reserving to such Lords and Titulars of erection who subscribed the general Surrender, the Few-mails, and Few-fermes of their saids Superiorities, ay and while they receive payment and satisfaction of the summe of one thousand markes usual money of Scotland, for ilk Chalder of Few-ferme victual; and for ilk hundred markes of Few-mails, and for ilk hundred markes of all other constant rent of the saids Superiorities, not consisting in victual or money; and not being naked service of vassals, according to the tenour of his Majesties general determination: and conforme to the conditions therein contained, as in the saids three Acts of this present Parliament at more length is exprest.

AND Forasmuch as it is necessarie for determination of the particulars foresaid, and of all such other points which are fit and expedient for the finishing and full perfection of the said glorious worke, anent the teinds, maintenance of Ministers and others foresaid, That a commission be granted by his Majestie, with consent of the Estates, and by authority of this present Parliament: THEREFORE His Majestie, with consent of the said Estates, hath granted, and by these presents granteth full power and commission to the persons after following: To wit, Nine of the Clergie, nine of the Nobilitie, nine of the small Barons, and nine of the Burgesses; Together with my Lord Chancellour, and eight officers of Estate, viz. *George Earle of Kinnowll Chancellour, William Earle of Morton Thesaurer, Iohn Archbishop of St Andrews, Thomas Earle of Hadingtown Lord Privie Seale, Patrick Archbishop of Glasgow, William Earle Marshal, George Earle of Wintown, Iohn Earle of Perth, Iohn Earl of Kinghorne, William Earle of Dumfreis, William Earle of Sterling Secretary, David Earle of Southask, Iohn Earle of Traquair Thesaurer Depute, Iohn Earle of Weymes, Archibald Lord Napier, George Lord Corstorphaine, Alexander Bishop of Dunkell, Iohn Bishop of Mur-*

ray, *John Bishop of Rosse, Adam Bishop of Dunblane, David Bishope of Brichen, Andrew Bishop of Argyll, George Bishop of Orknay, Sir Iohn Hay Clerke of Register, Sir Thomas Hope Advocate, Sir George Elphingstone Iustice Clerk, Sir Iames Galloway Master of Requests, Sir Robert Spotswood, Sir Iames Learmonth, Sir Iames Lokhart younger of Ley, Sir Iohn Charters, Sir Robert Grier, Iohn Boyll of Kelburne, Sir William Douglas of Cavers, The Laird of Inchermartine, the Laird of Lugtoun, Iohn Sinklar, Iohn Macknacht, Archibald Tod, Edward Edger, Master Alexander Guthrie, Gabriel Cuminghame, Robert Tailgeor, William Mickle-Iohn, and Master Robert Cuninghame*; or any fyfteeene of them, there being three of every Estate, with three of his Majesties officers of Estate. Of which number of fyfteen, the Lords Chancellor, Thesaurer, and Privie seale, Archbishops of Saint-Andrews or Glasgow, Earle Marshall, and Earle of Wintoun, or any one of them shall be one, to meet and conveene at *Holyrudehouse* or *Edinburgh* at such times and places as they shall think fit; And there to prosecute and follow forth the valuation of whatsoever teinds, parsonage or vicarage within the Kingdome, which are as yet unvalued. And also to receive the reports from the Subcommissioners, appointed within ilke presbterie, of the valuations of whatsoever teinds, led and deduced before them, according to the tenor of the sub-commissions direct to that effect. And to allow or dissallow the same, according as the same shall bee found agreeable or disagreeable from the tenour of their sub-commissions. And also with power to rectifie whatsoever valuations, led or to be led, to the enorme prejudice of the titulars, and to the hurt and detriment of the Kirke, and prejudice of the Ministers maintenance and provisions, or of his Majesties annuitie. And for the better expeding and advancing of the said valuations, with power to appoint Committies, or Subcommitties of their owne number, To receive the reports of the said valuations made or to be made; And to receive, admit and examine witnesses, and to take parties oathes, with their depositions, where the same is referred to oath; And to give such farther power to the said Committies or Subcommitties of their owne number, as they shall think fit for the good of the worke, and speedy finishing of the same; And sicklike, with power to them if need be, to appoint Subcommissioners, not being of their owne number within any parochin or presbyterie of the Countrie, for leading and deducing of the said valuations, and to receive the reports thereof, allow or disallow of the same: And generally with power to them, to set downe whatsoever other order or course which shall be thought fit and expedient for dispatch of the said valuations rectifying thereof or finall closing of the same. And sicklike, with power to the said Commissioners, or any fyfteen of them, as said is, there being three of ilk Estate, with any one of the persons of the *quorum* above-specified, after the closing and allowance of the valuations of ilk Kirke and Parochin, To appoint, modifie, and set downe a constant and local stipend and maintenance to ilk Minister, to be payed out of the tiends of ilk parochin, according to the tenour of the Acts above-specified. Referring like as his Majestie referres with consent of the said Estates, to the said commissioners, the tryal of the reasons and causes which may move the said Commissioners to goe beneath the quantitie of eight chalder of victual, or of eight hundred markes of money proportionally, in manner contained in the said Act. And sicklike, with power to the said Commissioners, to divide ample and spacious parochines, where the same shall be found necessarie and expedient, or to unite divers Kirks in whole or in part to others.; And to ratifie and allow after tryal and consideration such union or dismembring of Parochines, as hath beene



formerly made by vertue of the former Commissions. And sicklike with power to them, to appoint and provide for such other pious uses in each parochin, as the estate thereof may bear. And sicklike, with power to the said Commissioners, as said is, to take order that every heritor and life-renter of lands, shall have the leading of their own teinds, parsonages and vicarages thereof, they paying the price contained in the Act above-specified, incase they be willing to buy the same from the titular, having power to sell, or otherwise paying the rate of teind exprest in the foresaid Act; And to that effect, with power to the said Commissioners to set downe the prices of sellable teinds, according to the worth thereof in each part of the countrey, where the same grow and are bred; And also with power to them to set downe such good and ample securities, as may stand by law, both for the buyers of teinds, to the effect, the titulars may be fully denuded in their favour: And also for securitie to the titulars and sellers of the price due to be payed to them for the said teinds; And also to set downe the securitie in favour of the titulars and of the Ministers, so farre as concerns the maintenance assigned to them for good, thankful, and timous payment of the rate of teind, where the same are not, or cannot be sold. And sicklike with power to the said commissioners, to discusse and determine all questions which may arise betwixt the titulars and heritors, anent the price of teinds, according to the nature and qualitie of the rights to be sold, whether the same be heritable or temporal, and to proportionate the price accordingly; And also to divide the price of tiends betwixt heritors and life-renters, thereof; And betwixt titulars, tacksmen, and others who have several and distinct rights to the said teinds sellable, according to the qualitie of their rights: And also with power to them, to cause the titulars who sell their said teinds, to exhibit their rights and titles, to the effect that they may be lawfully denuded thereof, in favour of the said heritors and life-renters *respective*, without prejudice alwayes to his Majesties annuitie, to bee payed forth of the said teinds by the said titulars of tiends, or heritores, or life-rentars of lands, according to the tenor of the said Act of annuitie; And generallie with power to the said Commissioners, to decide and determine in all other points, which may concerne the leading and drawing of teinds, the selling and buying of the same, or payment of the rate thereof, contained in the Acts of Parliament above specified, or set downe in his Majesties general determination; with this provision and declaration alwayes, that the Archbishops, Bishops, Parsons, Vicars, and other beneficed persons, being Ministers, and their successors, shall be no farther bound but according to the provisions and conditions exprest in the submission made by the Bishops to his Majestie, which is of the date the                    day of                    1628 yeares, and registrate in the bookes of commission of surrenders and teinds, upon the thirteenth day of July, 1631: Which provisions and conditions are holden as exprest herein; And also with this provision, that the Vicarages of each Kirke being a several benefice and title from the Parsonage, shall be severally valued, to the effect the titulars or Ministers serving the cure, who have right to the said Vicarages, be not frustrate of the true worth of the said Vicarages: And sicklike, because by the Act above-specified, made anent superiorities of erections in favour of his Majestie, there is special reservation made to such titulars and Lords of erection, as have subscribed the general surrender of the few-mails, few-fermes, and other constant rent of the said superiorities, aye and while they be payed of the price thereof contained in his Majesties general determination, and according to the provisions specified therein. Therefore his Majestie and Estates give full power to the said commissioners or any fiftene of them, as said is, to call and convene before them the Lords of erection, and

others having right to the said few-mails and few-fermes, and other constant rent of the superiorities of Kirke-lands, at such particular diets as they shall appoint, and to urge the said Lords of erection and others foresaid, to give up their rentals of their said few-mails, few-fermes, and other constant rent foresaid of their said superiorities, conforme to his Majesties decree and determination, given out there-anent; And with certification as is therein contained, and to liquidat the other constant rent of the said superiorities, not consisting in victual or silver: To the effect after the full tryall of the said rental and liquidation thereof, the said Lords of erection may receive the price of a thousand marks for each chalder of few-fermes, and for each hundreth markes of the other constant rent, being redacted in money in whole or in part proportionally, from his Majesties Treasurers, principal, or depute, and incase of the absence and refusal of the saids titulars and Lords of erection, that the same may be consigned in the hands of the Clerke to the said commissioners, to remaine consigned for their behove; After the which consignment, it shall be lawful to his Majesties Treasurers, principal or depute, to up-lift, receive, and intromet with the said few-mails, few-fermes, and other constant rent foresaid, of all yeares and termes after the said consignment, according to the tenor of the said general determination; And also with power to the said commissioners as said is, to discusse and determine all questions that may arise betwixt the said Lords of erection and the heritors of the ground, pensioners, life-renters, and others pretending right to the said few-mails, & few-fermes, and to divide the price amongst them, according to the qualitie of their rights, and all other questions anent the few-mails, few fermes, and other constant rent foresaid: Which by his Majesties general determination is referred to the determination of the commissioners to be appointed to that effect; And whereas it may fall out that some of the commissioners now appointed by his Majestie and Estates, may be unable to attend the service, through death, sicknesse, or some other notour and knowne impediments: Therefore his Majestie reserves to himselfe the nomination of such other persons in their places, as his Majesty shall think fit, whom his Majestie by his letters shall recommend to the said commissioners, to the intent they may receive and admit them upon the said commission, and take their oathes for faithful discharge of the same. And his Majestie and Estates ordaine this present commission to endure unto the last day of December in the yeare of God, 1635 yeares: And farther induring his Majesties pleasure, and aye and while the same be expresly discharged by his Majesties warrand, or letter to that effect. And his Majestie with consent of the Estates foresaid, findes, declares, and ordains the Acts, decretes, and ordinances of the commissioners foresaid, and of the other persons, who shall be surrogate in their places by his Majestie in manner foresaid, in the whole particulars above-specified, and every one of them; To have the strength, force, and uthoritie of a decree, sentence, and Act of Parliament, and ordaines the Lords of Session to grant and direct letters of horning, poynding, and others thereupon, upon a simple charge of ten dayes, or otherwise as shall be found necessary. Attour for clearing of all doubts and difficulties which may arise anent the rectifying of valuations, or other particular heads following: His Majestie and Estates have declared and declare, that where valuations are lawfully led against all parties having interest, and allowed by the former commissioners according to the order observed by them, that the same shall not be drawne in question nor rectified upon pretence of enorm lesion, at the instance of the Minister, not being titular, or at the instance of his Majesties Advocat, for and in respect of his Ma-

jesties annuitie, except it be proved that collusion was used betwixt the titular and heritor, or betwixt the procurator fiscal and the titulars, and heritors, which collusion is declared to be where the valuation is led, with diminution of the third of the just rent presently payed, and which diminution shall be proved by the parties oathes. And sicklike it is declared that the provisions contained in the foresaid submission made by the Bishops, whereof mention is made in the foresaid Act of tithes, and which is repeated in this commission, shall be restricted to that whereof Archbishops, Bishops, Parsons, vicars, or other beneficed persons being Ministers, Colledges, Hospitals, and other dotations to pious uses were in actual and real possession the time of the said submission, which shall remaine with them in quantity and quality, according to the tenor of the said provision: And if any question shall arise betwixt the said Arch-bishops, Bishops, Parsons, Vicars, and other beneficed persons foresaid anent the leading of teinds, that the same shall be referred to his sacred Majestie, and to his Royal pleasure to be signified thereanent. And also anent laick patronages pertaining to any his Majesties subjects, before the yeare of God, 1561 yeares: His Majestie and Estates declare that the same falls within the compasse of the general submission made to his Majestie: And his Majesties determination given thereupon, and that alennarly in so farre as concerns a competent maintenance, to be locally payed forth of each Church, to the Minister and his successors; And anent the teinds of other mens lands: And anent the annuitie to be payed to his Majestie forth of the teinds of the said Kirk: And as to the remanent teinds the same to pertaine to laick patrons in price or rate thereof in all-cases, where the foresaid laick patrons were in possession of the teinds thereof, by the space of seven yeares within the fifteen yeares immediately preceding the date of the said general submission: With this declaration, that where the titulars or the Ministers provided to the said laick patronages and Kirks thereof, were in possession of the benefices foresaid, and frutes and rents thereof, either by leading of the teinds, or by up-lifting and intronetting with the whole rents thereof, by the space of seven yeares of fiftene yeares immediately preceding the said submission; in these cases, the difference betwixt the said laick Patrons, and the Titulars, and Ministers, shall be referred to his sacred Majestie, and to his Royal declaration to be given thereanent, and ordaines all former commissions anent the premisses, to cease in time coming, and this onely to stand in force in time to come.<sup>247</sup>

<sup>247</sup> See note annexed to 1617, ch. 3, and Connell on Tythes, vol. i. p. 143, *et seq.*

ACTA PARLIAMENTORUM  
REGIS CAROLI SECUNDI.  
I DIE JANUARI, A.D. M,DC,LXI.

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6. *Act and Acknowledgement of His MAJESTIES Prerogative, in the choice of His Officers of State, Councillors and Judges.*

THE Estates of Parliament, considering the great obligations that do ly upon them from the Law of GOD, the Law of Nations, the Municipal Laws of the Land, and their Oaths of Allegiance, to maintain and defend the Sovereign Power and Authority of the Kings *Majesty*, and the sad consequences that do accompany any inroachments upon, or diminutions thereof: Do therefore, from their sense of humble duty, Declare, That it is an inherent privilege of the Crown, and an undoubted part of the Royal Prerogative of the Kings of this Kingdom, to have the sole choice and appointment of the Officers of State, and Privy Councillors, and the nomination of the Lords of Session as in former times, preceeding the year, 1637. And that the Kings Sacred *Majesty* and His Heirs and Successors, are for ever, by vertue of that Royal Power, which they hold from GOD Almighty over this Kingdom, to enjoy and have the full exercise of that Right. And therefore, the Kings *Majesty*, with advice and consent of His Estates of Parliament, doth hereby Rescind and Annull all Acts, Statutes or Practices to the contrair, and Declare them to have been undutiful and disloyal invasions upon the Royal Prerogative, and to be void and null in all time coming.<sup>248</sup>

18. *Act annulling the pretended Convention of Estates, kept in the Year, 1643.*

Forasmuch as the power of calling of Parliaments, or Conventions of the Estates of this Kingdom, hath alwayes been, and is an undoubted privilege of the Crown, and doth soly reside in the Kings *Majesty*: And that notwithstanding thereof (among the many other invasions, which during these late times, have been made upon the Royal Prerogative) a pretended Meeting and Convention of the Estates was called and kept at *Edinburgh*, in *June*, one thousand six hundred fourty three, without any warrant from the Kings *Majesty*: And the Estates of Parliament now convened by His *Majesties* special Authority, having taken into their consideration the indiction, reasons and grounds of the calling of the said Convention, do find that the said pretended Convention of Estates, notwithstanding of all the specious pretexts made for the same, did meet, and convene, without

<sup>248</sup> In terms of this act, the appointment of the Lords of Session and Officers of State is vested in the Crown; see note annexed to 1579, ch. 38.

The Privy Council of Scotland was abolished by 6th Anne, ch. 6.

any lawful Warrant or Authority ; And therefore the Kings *Majesty*, with advice and consent of His Estates of Parliament, doth Declare the same, with all that was done therein, void and null, and Rescinds and Annuls all Acts or Deeds whatsoever, ratifying and approving the same.

22. *Act concerning the League and Covenant, and discharging the renewing thereof without His MAJESTIES warrant and approbation.*

Forasmuch as the power of Armes, and entring into, and making of Leagues and Bonds, is an undoubted priviledge of the Crown, and a proper part of the Royal Prerogative of the Kings of this Kingdom, and that in recognisance of His *Majesties* just Right, the Estates of Parliament of this His most ancient Kingdom of *Scotland*, have declared it high Treason to the Subjects thereof, of whatsoever number, less or more, upon any pretext whatsoever, to rise, or continue in Armes, or to enter into Leagues and Bonds, with Forraigners, or among themselves, without His *Majesties* special Warrant and Approbation, had and obtained thereto, and have Rescinded and Annulled all Acts of Parliament, Conventions of Estates, or other Deeds whatsoever, contrary to, or inconsistent with the same ; And whereas during these troubles, there have occurred divers things, in the making and pursuance of Leagues and Bonds, which may be occasion of jealousie in, and betwixt His *Majesties* Dominions of *Scotland*, *England* and *Ireland*. Therefore, and for preventing of all scruples, mistakes or jealousies that may hereafter arise upon these grounds, the Kings *Majesty*, with advice and consent of His Estates of Parliament, doth hereby Declare, that there is no Obligation upon this Kingdom by Covenant, Treaties or otherwise, to endeavour by Armes a Reformation of Religion in the Kingdom of *England*, or to meddle with the publick Government and Administration of that Kingdom. And the Kings *Majesty* with advice and consent foresaid, doth Declare, That the League and Covenant, and all Treaties following thereupon, and Acts or Deeds that do, or may relate thereto, are not obligatory, nor do infer any obligation upon this Kingdom, or the subjects thereof, to meddle or interpose by Armes, or any seditious way, in any thing concerning the Religion and Government of the Churches of *England* and *Ireland*, or in what may concern the Administration of His *Majesties* Government there. And further, His *Majesty*, with advice and consent of His Estates, doth hereby Discharge and Inhibite all His *Majesties* Subjects within this Kingdom, that none of them presume upon any pretext of any Authority whatsoever, to require the renewing or swearing of the said League and Covenant, or of any other Covenants, or publick Oaths concerning the Government of the Church, or Kingdom, without His *Majesties* special Warrant and Approbation ; and that none of His *Majesties* Subjects offer to renew and swear the same, without His *Majesties* Warrant, as said is, as they will be answerable at their highest peril.

46. *Act approving the Engagement, 1648. and annulling the pretended Parliaments and Committes kept thereafter.*

Forasmuch as in the year one thousand six hundred fourty and eight, the Estates of Parliament of this Kingdom, and His *Majesties* good Subjects therein, from the sense of their duty to Almighty GOD and the King's *Majesty*, did cheerfully undertake and concurr in an Engagement, for relief of His late *Majesty* of glorious memory from His imprisonment, and for His restitution to the Royal Government of His Kingdoms. And the Estates of Parliament, now convened

by His *Majesties* special Authority, taking that Engagement to their consideration, do find it to have been an Honourable, Just, Necessary and Seasonable Discharge of that indispensable Duty, whereunto this Kingdom, and the Subjects thereof, are by the Law of GOD, by the Law of Nature and Nations, by the Municipal Laws of the Land, by their Allegiance, and by all the strictest bonds of Conscience and Honour, obliged to the most Sacred Person, and Royal Authority of their King's *Majesty*. And therefore, Our Sovereign Lord, with advice and consent of His Estates of Parliament, doth Ratifie and Approve that Engagement for His *Majesties* relief and restitution to His Royal Government. And doth declare, that as it was a most noble and pious Testimony of the Loyalty of His *Majesties* good Subjects of His ancient Kingdom, and of their affection and zeal to His *Majesties* Person and Government: So His *Majesty*, for Himself and His Successors, doth assure, that They will always retain a grateful resentment thereof; And have appointed these presents to remain upon Record, for the due honour of these persons who did engage therein, and of their posterity for ever.

And whereas the necessity and justice of this undertaking, with the interest this Kingdom had in His *Majesties* Person, by the honour of His Royal Birth, and By these many and singular Acts of Grace He had lately conferr'd upon it, might justly have claimed a ready concurrence of all the Subjects; Yet there wanted not some, and even such, whom not long before, His *Majesty* had obliged by marks of His Royal favour both of honour and profit, who made it their work to disapoint and oppose the same; And for that end, having gathered some mutinous Commons and others, who by a few seditious Ministers, had been preached into an open Rebellion, they in the moneth of *September*, one thousand six hundred fourty and eight years, without any lawful Authority, (and not giving the Oath mentioned in the Commission of Parliament: without which, it was expresly provided, they were not to have accesse to, nor place in, the Committee) did usurpe to themselves the name and power of a Committee of Estates; and having by their own Edicts, declared all such persons as had given testimoney of their duty and loyalty to the King, to be incapable of being Members of Parliament, or of having voice in the Elections to the Parliaments. They then, without any lawful Authority, called a Packt meeting of Parliament, to consist only of persons of their own stamp and faction: who accordingly met in *January*, one thousand six hundred fourty and nine years: and assuming to themselves the Sovereign Authority and Government of the Kingdom, intended to Establish and fix the power in their own persons for ever. For which purpose, having publicly declared against that necessary and just Engagement, for His *Majesties* relief and restitution to His Royal Government: Having approven all the oppositions and risings in Armes against the same, and by Oath solemnly engaged themselves to a constant adherence thereunto: Having for their assistance called in the Usurper *Cromwel*, and a part of his Army: Having by publick engagement, given up the honour and safety of this ancient Kingdom to the *English*: and declared, that His *Majesty* should be obliged to Ratifie that unworthy act, before any Treaty were with Him for His relief: Having given order to their Commissioners, to protest against any agreement betwixt His *Majesty* and His Subjects in *England*, in the Treaty at the *Isle of Wight*: Having, so far as in them lay, weakened and dissolved the common Allegiance of the Subjects to the King's *Majesty*, by proclaiming His Right to the Crown, with base restrictions and limitations, and pressing the Subjects against their consciences, to subscribe the same: Having disowned His *Majesties* interest in the Quarrel be-

twixt them and the *English*, who had invaded this Kingdom, meerly to destroy His *Majesties* Interest in it: Having taken the lives of some, and forced others of His *Majesties* good Subjects of best quality, to flee to Forraign parts for their safety: Having fined, confined, imprisoned, and seized upon the livelihood of many: Having put disgraceful characters and incapacities upon all who had witnessed any affection to His *Majesties* Government: Having unjustly pronounced, and with cruelty executed Sentences of Forfeiture against the lives and fortunes of such as from conscience of their duties, did oppose them: Having in their publick Meetings, appointed, that the innocent Wives and Children of these, who offered to vindicate His *Majesties* Authority, should be seized on, and transported to Forraign Countries: Having once and again sollicite their Brethren in *England*, that such of this Kingdom, as (for venturing their lives for the King) were then prisoners in *England*, should be still kept Prisoners, as Pledges of the Peace: Having thrust out of the Offices of State, places of Judicatory and publick Trust, all such as were willing to engage for His *Majesties* relief and restitution to His Government, and put such in their places, as did oppose the same: Having laid on, and raised, great exactions and sums of money from the people, and employed them for their own uses; Having seized on His *Majesties* Revenues, and bestowed them upon themselves, and such others as were in open Opposition and Arms against Him: Having also seized upon the Properties and due Rights of the Subjects, and the Patronages by Law secured unto them: And having, by these and many such like Acts, endeavoured to perpetuate themselves in their usurped Power, they prorogated the meetings of their pretended Parliaments from time to time, substituting some of their Trustees, for carrying on of their designs in the while. And the Estates of Parliament, having taken these proceedings unto their serious consideration, Do find, that there was no Law, nor lawful Authority for the Meetings of these pretended Parliaments and Committes of Estates: But that the persons, meeting therein, did without any lawful warrand, and in contempt of His *Majesties* Authority, usurp the power to themselves.

And therefore, the King's *Majesty*, with advice and consent of His Estates of Parliament, doth Rescind and Annul these pretended Meetings of Parliament, and Committes above mentioned, and all other Meetings of any pretended Parliaments or Committees flowing from the same, and all Acts, Deeds and Treaties, done by them or their warrand: Excepting alwayes all such Acts as were past in any Meeting of Parliament, or Committee of Estates, authorized by His *Majesties* presence, and are not inconsistent with this present Act. And also Declares any Ratification, which thereafter was past, of those Meetings and Acts, to have been void from the beginning: Except in so far as is exprest in the Indemnity, Declarations and Provisions, after-mentioned. Yet, notwithstanding all these provocations, the King's *Majesty*, from His innate goodness, being more desirous to reclaim His Subjects to their duty by Acts of Mercy, then to reduce them by their too much deserved Censure, Doth of His meer favour and grace, with advice and consent foresaid, Indemnifie all such persons, who sat and acted in these pretended Parliaments and Committees, or who acted in order thereunto, or by vertue of, and in obedience to, the same, To be in all time coming, unquestioned in their lives and fortunes, for these their actings; Excepting such as shall be excepted in a general Act of Indemnity, to be past by His *Majesty* in this Parliament.

And forasmuch as the Ordinar Courts of Justice, did sit and act by Warrand of these Meetings, the King's *Majesty*, for the good and ease of the people, doth with

advice foresaid, Declare, That none of the Acts, Decreets or Sentences, given by these who sat as or ds of Session, or as inferiour Judges within this Kingdom these years, nor no Execution following thereupon, are for want of lawful Authority to be questioned: Whereanent, His *Majesty*, with advice foresaid, by these presents dispenses. And also, His *Majesty*, considering that by a pretended Act and Commission, from the said pretended Meetings or Parliaments, Augmentations were granted to Ministers, Kirks were divided, new Kirks were erected, and Lands from one Paroch to another, dis-joyned and annexed, and divers other particulars decerned, in relation to the Plantation of Kirks: which Commissions, one or more, though they had no lawful Authority, but in themselves were and are null. Yet, His *Majesty*, being desirous to give all due encouragements to the Ministers of the Gospel, doth, with advice and consent foresaid, Declare, That all Acts, Decreets and Sentences, pronounced and given forth by the saids Commissioners, and all Executions thereupon, are and shall stand valid in time coming, except such as upon the complaint of any party, shall be found to have been unjustly or exorbitantly pronounced and decerned. The determination whereof, is hereby referred by His *Majesty*, with advice and consent foresaid, to the Commission for Plantation of Kirks, to be established by His *Majesty* in this present Parliament: that they after hearing of parties, and consideration of particulars, may take such course for altering, annulling or allowing of what was done by vertue of the saids Commissions in the years, one thousand six hundred and forty nine, and one thousand six hundred and fifty, as they shall think just, conform to the standing Laws and Acts of Parliament, preceeding the year one thousand six hundred and forty nine; and Ordains process upon supplication to be summarly granted, parties alwayes being cited, and that without any reduction. As also, with power to the saids Commissioners to be appointed, upon the dependance of the saids complaints and process, to discharge execution upon the foresaid Decreets in whole or in part, as they shall find just, ay and while the matter may be determined by them. And forasmuch as by a pretended Commission for the Exchequer, divers Infestments, Gifts and others, were past in the foresaid years, one thousand six hundred and forty nine, and one thousand six hundred and fifty; His *Majesty*, with advice foresaid, Declares, That all such Gifts, Infestments and others, are and shall be valid, excepting alwayes new Gifts and Dispositions of Lands and others, granted and past to His Highness prejudice, and such other Gifts as upon the complaints of parties, shall by His *Majesties* Treasurer and Commissioners of Exchequer, be found to have been unjustly granted or past, in prejudice of prior Gifts under His *Majesties* Hand, though not past in Exchequer. And whereas by a pretended Act of the foresaid pretended Parliament, entituled, *Act abolishing the Patronages of Kirks*, all Patronages and Presentations of Kirks, whether belonging to the King or any Laick Patron, Presbyteries or others, were discharged, and all Acts, Gifts and Rights, granted thereanent, Rescinded. And yet nevertheless, it was thereby declared, That the taking away of the Patronages, should not prejudice the Patrons Rights to the Teinds, nor weaken his Infestment wherein the same is contained. And that the Teiths of the Kirks, whereof the Presentations were abolished, should belong heretably to the Patrons, and be inserted in their Rights and Infestments in place of their Patronage, with power to the Patron to dispone upon the saids Teinds, in manner and with the exception contained in the said Act. And notwithstanding that the foresaid Act and whole Parliament be declared null; yet nevertheless, His *Majesty*, with advice foresaid, doth by these presents Declare, That it shall be law-



ful to Laick Patrons or Heretors, to agree with the beneficed persons for Tacks or Rights of Teinds, belonging to the said beneficed person, according to the Laws of the Kingdom; with this provision that the saids Tacks, shall be no wayes prejudicial to the Stipend and Maintenance of the Ministers and persons to be presented, according as the same hath been already modified, or shall be modified in time coming; and that notwithstanding of any Acts or Statutes made in the contrair. All which Acts, his *Majesty*, with consent foresaid, by these presents Discharges; And in like maner, his *Majesty*, with advice foresaid, Declares, That as to such persons who are presently in possession of Kirks, pretaining to the saids Laick Patronages, the saids persons and Ministers shall, during their service, claime no right nor possession to the Teinds of their saids Kirks and Parochins, other then they had formerly before the making of this Act; they having alwayes a sufficient maintenance allowed and granted to them according to the Laws of the Kingdom.

67. *Commission for Plantation of Kirks, and Valuation of Teinds.*

OUR Sovereign Lord, considering the great care His Royal Father and Grandfather, of ever blessed memory, had, at all times, of the Reformed Religion, within this Kingdome, and of the Maintenance and Provision of the Ministry and Churches thereof: Concerning which, and for the publick good of the Nation, his Majesties Royal Father did emit a declaration, immediatly after His succession to the Crown, and concerning diverse other particulars relating to Teinds and Superiorities of Kirk-lands: in order whereunto, diverse Acts and Ordinances of Parliament and of Commissions, were from time to time made, during the Reign of His ever Glorious Father; And yet, by the unhappy Troubles of the time, his Royal purpose hath not got a final accomplishment, so that diverse Churches are as yet unprovided with sufficient Maintenance, many Teinds unvalued, and diverse other particulars are as yet unperfected; And His Majestie being desirous to prosecute this good Work, for the universal good of the People, and namely for the encouragement of the Ministers of the Gospel, His Majesty, with advice and consent of the Estates of Parliament, Doth Ratifie and Approve the nineteenth Act of the Parliament holden at *Edinburgh* by His Royal Father, in *Anno* one thousand, six hundred, and thirty three, Intituled, *Commission for Valuation of Teinds &c.* in the whole Heads, Clauses and Contents thereof, except in so far as there hath been any derogation made thereto, by Acts and Commissions made and granted by His Majestie, since the date of the said Act, or granted by pretended Parliaments since and which are Ratified or Salved, or to be Reserved by this present Parliament. And His Majestie with advice and consent foresaid, doth give full power and Commission to the persons aftermentioned, viz. *John Earl of Middletoun* His Majesties Commissioner, *William Earle of Glencairn* Lord High Chancellor, *John Earl of Craufurd* and *Lindsay Lord Treasurer*, *John Earl of Rothes* President of His Majesties privy Council, *William Duke of Hammiltoun*, *James Marquess of Montrose*, *John Earl of Lauderdale* His Majesties Secretary, *William Earl of Marishal*, *John Earl of Athol*, *George Earl of Linlithgow*, *James Earl of Home*, *James Earl of Tullibardin*, *William Earl of Roxburgh*, *John Earl of Haddingtoun*, *James Earl of Annandale*, *William Earl of Dumfries*, *John Earl of Tweddal*, *James Earl of Calendar*, *John Earl of Dundee*, *David Viscount of Stormount*, *John Lord Sinclair*, *David Lord Cardros*, *John Lord Belhaven*, *Lord Halkertoun*, *William Lord Cochran*, *William Lord Bellenden*, *Sir John Gilmor of Craigmiler* President of the Session, *Sir Archibald Primrose* of Ches-

ter Knight and Barronet, Clerk of His Majesties Council, Registers and Rolls, Sir John Fletcher His Majesties Advocat, Sir Robert Murray Justice Clerk, Sir James Lockhart of Lee, Sir George Mackenzie of Tarbet, Sir James Foulis of Colington, Sir Archibald Stirling of Carden, Sir James Dalrymple of Stair, Sir John Scougal of Whittetkirk, Senators of the Colledge of Justice; Alexander Bruce of Kincairn, Sir John Vrqhert of Cromarty, Sir Robert Flecher of Salton, Sir Alexander Gibson of Durie, Sir Robert Innes of that ilk, James Crichton of St. Leonards, Sir George Kinnaird of Rossie Sir Gilbert Ramsay of Balmayn, John Murray of Polmais, William Scot of Ardross, Sir James Dundas of Arnestoun, Sir John Foulis of Ravilistoun, Richard Murray of Broughton, Sir Robert Hepburn of Keith, Mr. Robert Preston of that ilk, Sir Andrew Ramasay, Sir Robert Murray; Sir Archibald Sydsersf, Sir William Thomson and John Miln Burgesses of Edinburgh, Sir Alexander Wedderburn, & Alexander Wedderburn Burgesses of Dundee, Mr. John Paterson of Perth, John Bell of Glasgow, William Cunningham of Air, Andrew Glen of Linlithgow, Duncan Nairn of Stirling, Alexander Bruce of Culross, Andrew Carstairs of St. Andrews, and William Seaton of Haddington, Burgesses: Or any thirteen of them, there being alwayes present three Noblemen, three Gentlemen, and three Burgesses, with His Majesties Commissioner, the Lord Chancellor, Lord Theasuren, Lord President of the Council, Lord Privy Seal, the Lord Secretary, or any one of them, with power to them, or *Quorum* foresaid, to meet and conveen at *Edinburgh*, or such other place or places, at such times and diets as they shall appoint, to value and cause value whatsoever Teinds great or small, Parsonage or Vicarage, of whatsoever Lands and others within this Kingdom lyable to the payment of Teinds of whatsoever nature or quality the same be of which are yet unvalued. Providing the Ministers serving the Cure, who do lead Teinds, be secured of good and thankful payment of so much victual or money answerable to the worth of the saids Teinds, as the Teinds shall be valued to. And also with power to them to receive reports from Sub-commissioners, and to appoint Sub-commissioners conform to the former Acts and Commissions, to appoint constant and local Stipends, and grant augmentations, to dis-joyn too large and spacious Kirks, build and erect new Kirks, dis-member, annexe and unite Kirks, and to take order that every Heritor and Life-renter shall have the leading and buying of their own Teinds, if they be willing, according to the Rates prescribed by former Commissions, namely by the foresaid Commission granted by his Majesty, with consent of the Estates of Parliament, in *Anno* one thousand six hundred thirty and three. And with power to the saids Commissioners or *Quorum* foresaid, to give recompence to Parties for the augmentation of Stipends to be imposed by this Commission in the same way as was done by former Commissions, namely by the Commission in *Anno* 1617. With power to them to determine all Questions concerning the Prices of Teinds betwixt Titulars and others having right to the Teinds, and the Heritors: And to appoint such securities in favours of the Titulars and others having right, by the Heritors payers of the valued Duties or buyers of the saids Teinds, and in favours of the Ministers as to their maintenance, as the saids Commissioners shall think fitting, according to the Rules set down in the saids former Acts, namely in the said Act, in *Anno* one thousand six hundred thirty and three. And suchlike, with power to them to appoint and provide for such other pious uses in each Paroch as the Estate thereof may bear. Declaring, that where the Vicarage of any Paroch is a several Benefice and Title from the Parsonage, the same shall be severally valued, to the effect

the Titulars or Ministers serving the Cure, having right to the said Vicarage, be not frustrate of the true worth thereof. It is alwayes Declared, That Ministers serving the Cure, who now lead their Teinds, and that Colledges, Schools and Hospitals be not constrained to sell, set nor dispoſe their Teinds in prejudice of their Successors notwithstanding of the valuation thereof; and that Titulars and others having right to Teinds, shall not be forced to dispoſe any Teinds valued or to be valued, which they shall be content and willing to assign and dispoſe to the Minister serving the Cure of the Paroch as a part of his Provision. And His Majesty, with consent foresaid, Declares, That where valuations are lawfully led against all parties having interest, and allowed by former Commissions, according to the order observed by them, that the same shall not be drawn in question, nor rectified upon the pretence of enorm lesion, at the instance of the Minister, not being Titular; or at the instance of his Majesties Advocate, for and in respect of his Majesties Annuities: Except it be proved that collusion was used betwixt the Titulars and Heritor, or betwixt the Procurator-fiscall and Heritors and Titulars; which collusion is Declared to be where the Valuations are led with the diminution of a third of the just Rent, and which diminution shall be proved by the Parties Oaths. And albeit that all the Acts of the pretended Parliaments, in the years one thousand six hundred and forty, and one thousand six hundred forty and one, and since; are declared by an Act of this present Parliament, null and of none avail in all time comming; yet it is hereby Declared, That all and whatsoever Valuations, Acts, Sentences and Decreets, done, concluded, and decerned by vertue of any Commissions granted by the saids pretended Parliaments, with all execution used or to be used thereupon, are and shall stand valid in all times comming, notwithstanding of the foresaid Act Rescissory; And this for the good and ease of the People, and for incouragement of the Ministers of the Gospel, whereunto his Majesty hath alwayes a tender respect. And although by a special Act of this present Parliament, the pretended Parliament holden in *Anno* one thousand six hundred and forty nine, and in the beginning of the year one thousand six hundred and fifty, is from the beginning Declared void and null, and all that hath followed thereon; Yet neverthelesse His Majesty Doth, with advice foresaid, Authorize all Valuations, Acts, Decreets and Sentences led, deduced and pronounced by the Commissions, one or moe appointed by the said pretended Parliament, for Plantation of Kirks and Valuation of Teinds, and all execution competent thereupon; Excepting such Decreets and Sentences given in favours of Ministers for their Stipends, or for dividing, uniting, annexing or building of Kirks, which shall be found to have been unjustly or exorbitantly decerned: The determination whereof is hereby referred by his Majesty, with consent foresaid to the saids Commissioners, that they after hearing of parties, and consideration of particulars, may take such course for altering, annulling or allowing of the saids Acts, Decreets, and Sentences, as they shall think fitting, conform to the Laws, Practique and custom observed preceeding the year one thousand six hundred and forty nine: and Ordains Processe upon Supplications to be summarly granted, parties alwayes being cited, and that without any reduction. And it shall be lawful to the saids Commissioners or *Quorum* foresaid, to proceed in all Summons and Actions to be intended for that effect, within the space of two years after the first down-sitting of the Commission. As also, with power to the saids Commissioners, upon the dependance of the saids Complaints and Processes to discharge execution upon the foresaid Decreets, in whole or in part, as they shall find just, ay and while the matter be determined by

them. As also in respect that by diverse Decreets pronounced by the saids Commissioners appointed by the said Commission, in *Anno* one thousand six hundred and fourty nine, the burden of an Augmentation was put upon diverse Tacks-men of Teinds, and yet no recompence was made to them by prorogating of the saids Tacks; in regard also that diverse Registers of Commissions, preceeding the year one thousand six hundred and fourty nine, are lost, whereby Prorogations were granted in favours of Tacks-men, and the Extracts also perished the time of the Troubles: Therefore his Majesty, with consent foresaid, Gives power to the saids Commissioners, or *Quorum* foresaid, appointed by this Commission, to grant recompence and prorogation to the saids Tacks-men, in the same manner as was prescribed by the former Commissions, namely by the Commission in *Anno* one thousand, six hundred, and seventeen, the Titulars alwayes being cited thereto. And whereas it may fall out that some of the saids Commissioners now appointed, may be unable to attend the service, through death, sickness, or some other notour and known impediment. Therefore His Majesty Declareth, that He shall be careful to fill their places with other persons qualified, whose Oaths for faithful discharge of the same, shall be taken by the Lord Chancellor, or in his absence, by the President of the said Commission for the time: And ordains this present Commission to endure ay and while the same be discharged by His Majesty; and Ordains the Acts, Decreets and Ordinances thereof, to have the force, strength and effect of a Decreet, Sentence and Act of Parliament; and the Lords of the Session to grant and direct Letters of Horning, Poynding and others requisit, in manner contained in the foresaid former Commissions. And considering that it was the will and pleasure of His Majesties Royal Father, that all Heritors, who should be willing to buy, should have their own Teinds at reasonable Rates; Therefore His Majesty, with advice foresaid, Statutes and Ordains, that all Heritors whose Teinds are not valued, shall have liberty to value and buy the same at such Rates as are contained in the Act of Parliament one thousand, six hundred, and thirty three years. With power to augment the saids Rates according to the burden of Augmentations and others sustained by the Titulars, since the said Act of Parliament one thousand, six hundred, and thirty three years; and the saids Heritors to have the liberty of buying, as said is, within the space of three years after the valuation. With power to the saids Commissioners to determine therein according to Justice; with this Declaration alwayes, That incase the impediment during the space foresaid, flow from the Titular, by reason of his minority or other inability, in that case, the Heritor who offered himself ready to buy his own Teind within the space foresaid, shall have place, so soon as the impediment is removed, to buy his Teinds, notwithstanding of the expiring of the years and space above exprest. And it is Declared, that if the Heritor be Minor, and his Tutors neglect the buying of his Teinds within the foresaid space, the Minor shall have Action for two years after his minority, to compel the Titular for selling of the saids Teinds.<sup>249</sup>

88. *Act concerning Appearand Heirs, their payment of their Predecessors and their own Debts.*

OUR Sovereign Lord, with advice and consent of the Estates of Parliament, taking into consideration, that Appearand Heirs immediately after their Predecessors death, do frequently dispoise their Estate in whole or in part, in prejudice of

<sup>249</sup> See note annexed to 1617, ch. 3.

their Predecessors lawful Creditors, before their death come to their knowledge, or before they can do lawful diligence against the saids Appearand Heirs; and which Dispositions the saids Appearand Heirs do often make before they be served Heirs and Infeft; or otherwayes, by collusion they suffer their Predecessors Estates to be comprised or adjudged from them for payment of their own proper Debts, real or simulate, without respect to their Predecessors Creditors. And His *Majesty*, considering how just it is, that every mans own Estate should be first liable to his own Debt, before the Debts contracted by the Appearand Heirs. Therefore His *Majesty*, with consent foresaid, Declares, That the Creditors of the Defunct shall be preferred to the Creditors of the Appearand Heir in time coming, as to the Defuncts Estate; Providing alwayes, that the Defuncts Creditors do diligence against the Appearand Heir, and the real Estate belonging to the Defunct, within the space of three years after the Defuncts death. And because it were most unreasonable, that the Appearand Heir, when he is served and retoured Heir, and infeft *respective*, should for the full space of three years, be bound up from making Rights and Alienations of his Predecessors Estate; and yet it being as unreasonable that he should dispoen thereupon immediatly or shortly after his Predecessors death, in prejudice of his Predecessors Creditors, he having year and day to advise whether he will enter Heir or not. Therefore it is hereby Declared, That no Right or Disposition made by the said Appearand Heir, in so far as may prejudice his Predecessors Creditors, shall be valid, unless it be made and granted a full year after the Defuncts death.<sup>250</sup>

126. *Act Rescinding and Annulling the pretended Parliaments, in the years, 1640, 1641, &c.*

THE Estates of Parliament, considering that the Peace and happiness of this Kingdom, and of His *Majesties* good Subjects therein, doth depend upon the Safety of His *Majesties* Person, and the Maintenance of His Royal Authority, Power and Greatness: And that all the miseries, confusions and disorders which this Kingdom hath groaned under, these twenty three years, have issued from, and been the necessary and natural products of these neglects, contempts and invasions, which in and from the beginning of these troubles, were upon the specious (but false) pretexts of Reformation (the common cloak of all Rebellions) offered unto the Sacred Person and Royal Authority of the Kings *Majesty*, and His Royal Father of blessed memory. And notwithstanding, that by the sacred Right, inherent to the Imperial Crown (which His *Majesty* holds immediatly from GOD Almighty alone) and by the ancient constitution and fundamental Laws of the Kingdom; the power of convocating and keeping Assemblies of the Subjects; the power of Calling, Holding, Proroguing and Dissolving of Parliaments, and making of Laws, the power of entering into Bonds, Covenants, Leagues and Treaties; the power of raising Armies, keeping of Strengths and Forts, are Essential parts, and Inseparable priviledges of the Royal Authority and Prerogative of the Kings of this Kingdom: Yet, such hath been the madness and delusion of these times, that even Religion it self, which holds the Right of Kings to be Sacred and Inviolable, hath been pretended unto, for warrand of all these injurious Violations and Incroachments, so publickly done and owned, upon and against His *Majesties* just Power, Authority

<sup>250</sup> In reference to this act, See Erak. b. iii. tit. viii. § 131, and Bell's Com. vol. i. p. 728, *et seq.*

and Government ; By making and keeping of unlawfull Meetings and Convocations of the people ; By entering into Covenants, Treaties and Leagues ; By seizing upon, and possessing themselves of His *Majesties* Castles, Forts and Strengths of the Kingdom ; and by holding of pretended Parliaments, making of Laws, and raising of Armes for the maintaining of the same : And that not only without warrant, but contrary to his *Majesties* express Commands. And although the late Kings *Majesty*, out of His meer grace and respects to this His native Kingdom, and the peace and quiet of His people, and for preventing the consequences, which such a bad example, and practice might occasion, to the disturbance of the Peace of His other Kingdoms, was pleased in the year, one thousand six hundred and fourty one, to come into this Countrey, and by His own presence, at their pretended Parliaments and otherwayes, to comply with, and give way to, many things neerly concerning the undoubted Interest and Prerogative of the Crown, expecting that such unparallel'd Condiscentions should have made His Subjects ashamed of their former miscarriages, and the very thoughts thereof, to be hatefull to them and their posterity for ever. Yet such was the prevalency of the spirit of Rebellion that raged in many for the time, that not content of that peace and happiness, which even above their desires, was secured to them ; nor of those many Grants of honour and profit, by which, His *Majesty* endeavoured to endear the most desperate of them to their duty and obedience, they then, when His *Majesty* had not left unto them any pretence or shadow of any new desire to be proposed, either concerning themselves or the Kingdom, did most unworthily engage, to subvert His *Majesties* Government, and the publick Peace of the Kingdom of *England* : For which purpose, having joyned in a League with some there, they, for the better prosecution of the same, did assume unto themselves, the Royal Power, kept and held Parliaments at their pleasure ; by the pretended Authority of which, they laid new exactions upon the people (which in one moneth did far exceed what ever by the Kings Authority had been raised in a whole year) levied Armies, sent out Edicts, requiring obedience unto their unlawfull demands ; and with all manner of violence pursued such as out of duty to His *Majesties* Authority opposed them, by fines, confynments, imprisonment, banishment, death, and forfeiture of their posterity ; and with their Army thus raised, invaded His *Majesties* Kingdom of *England*, and joyned such as were in Armes against His *Majesty* there. And thus maintaining their usurped power, and violently executing the same against all Law, Conscience, Honour and Humanity, have made themselves instruments of much loss, shame and dishonour to their native Countrey, and have justly forfeited any favour they might have pretended to, from His *Majesties* former concessions. And forasmuch, as now it hath pleased Almighty GOD, by the power of His own right hand, so miraculously to restore the Kings *Majesty* to the Government of His Kingdoms, and to the exercise of His Royal Power and Sovereignty over the same, The Estates of Parliament do conceive themselves obliged, in discharge of their duty and conscience to GOD and the Kings *Majesty*, to employ all their power and Interest for vindicating His *Majesties* Authority from all these violent invasions that have been made upon it, and so far as is possible, to remove out of the way, every thing that may retain any remembrance of these things, which have been so injurious to His *Majesty* and His Authority, so prejudicial and dishonourable to the Kingdom, and destructive to all just and true interests within the same. And considering, that besides the unlawfulness of the publick Actings during these troubles, most of the Acts in all and every of the Meetings of these pretended Parliaments, do highly

inroach upon, and are destructive of, that Sovereign Power, Authority, Prerogative and Right of Government, which by the Law of GOD and the ancient Laws and Constitutions of this Kingdom, doth reside in, and belong unto, the Kings *Majesty*, and do reflect much upon the honour, loyalty and reputation of this Kingdom, or are expired, and serve only as testimonies of disloyalty and reproach upon the Kingdom, and are unfit to be any longer upon Record. Therefore the Kings *Majesty* and Estates of Parliament, do hereby Rescind and Annul the pretended Parliaments, kept in the years one thousand six hundred and fourty, one thousand six hundred and fourty one, one thousand six hundred and fourty four, one thousand six hundred and fourty five, one thousand six hundred and fourty six, one thousand six hundred and fourty seven, and one thousand six hundred and fourty eight, and all Acts and Deeds past and done in them, and Declares the same to be henceforth void and null. And His *Majesty*, being unwilling to take any advantage of the failings of His Subjects during those unhappy times, is resolved not to retain any remembrance thereof, but that the same shall be held in everlasting oblivion; and that all difference and animosities being forgotten, His good Subjects may in a happy union, under His Royal Government, enjoy that happiness and peace, which His *Majesty* intends, and really wisheth unto them as unto Himself, Doth therefore by advice and consent of His Estates of Parliament, grant His full Assurance and Indempnity to all persons that acted in, or by vertue of the said pretended Parliaments and other Meetings flowing from the same, to be unquestioned in their Lives or Fortunes, for any Deed or Deeds done by them in their said usurpation, or by vertue of any pretended Authority derived therefrom, excepting alwayes, such as shall be excepted in a general Act of Indempnity, to be past by His *Majesty* in this Parliament. And it is hereby declared, That all Acts, Rights and Securities, past in any of the pretended Meetings above-written, or by vertue thereof, in favours of any particular persons, for their civil and private interests, shall stand good and valid unto them, untill the same be taken into further consideration, and be determined in this, or the next Session of this Parliament.<sup>261</sup>

<sup>261</sup> The following act appears in Mr Thomson's edition of the Scots acts, but not in the edition of 1681.

CCXY. "Act anent the precedencie of the President of the Session, The Lord Register, "the Lord Advocat and Thesaurer Deput.

"The Kings Majestie and Estates of Parliament Haveing at lenth heard and considered "the Report underwritten presented to them from the Lords of the Articles wherof the "tenor follows The Lord Comissioner and Lords of the Articles Haveing heard the President of the Session The Lord Register The Lord Advocat and Thesaurer Deput concerning the precedencie due to them in their severall offices Doe offer to the Parliament "That they find the President of the Session for the tyme being hes had undoubted possession of Precedencie befor the other three And that the Clerk of Register and Advocat "wer officers of State and Privy Councillours long befor the Thesaurer Deput And particularly in King James the thrids tyme in the year 1482 The Clerk of Register is enrolled "as ane officer of State in the Rolls and Records of Parliament And in the year 1612 wher "the first mention is of a Thesaurer Deput as ane officer of State The Clerk of Registers " & Advocat are ranked befor him And siclyk in the Parliament 1617 wher King James "the Sext of blessed memorie be a speciall Act established the number of the officers of "State Ther also the Clerk of Register and Advocate are ranked befor the Thesaurer Deput And in the Parliament 1633 at which tyme the Thesaurer Deput for the tyme was a "Lord and Barron of Parliament Yet in the ranking of the officers of State both as to the "Parliament & Articles The Clerk of Register is ranked befor the Thesaurer Deput, And "that in the Comissions of Privy Council both befor and since that time The Clerk of Re-

215. *Act against Cursing and Beating of Parents.*

OUR Sovereign Lord, and Estates of Parliament, considering how great and atrocious a crime it is, for Children to beat, or curse their Parents; And how the Law of GOD hath pronounced just sentence of death against such, as shall either of these wayes injure either of their Parents. Therefore, His *Majesty*; with advice of His Estates, Doth hereby Statute and Ordain, That whosoever, Son or Daughter, above the age of sixteen years, not being distracted, shall Beat or Curse either their Father or Mother, shall be put to death without mercy: and such as are within the age of sixteen years, and past the age of pupillarity, to be punished at the arbitrement of the Judge, according to their deservings, that others may hear and fear, and not do the like.<sup>282</sup>

216. *Act against the Crime of Blasphemy.*

OUR Sovereign Lord, and the Estates of Parliament considering, that hitheto there hath been no Law in this Kingdom, against the horrible crime of Blasphemy: Therefore, His *Majesty*, with advice of His said Estates, doth hereby Statute and Ordain, That whosoever hereafter, not being distracted in his wits, shall rail upon, or curse GOD, or any of the Persons of the blessed Trinity, shall be processed before the chief Justice; and being found guilty, shall be punished with Death. Likeas, His *Majesty*, with advice foresaid, Findes, Statutes and Ordains, That whosoever hereafter shall deny GOD, or any of the persons of the blessed Trinity, and obstinately continue therein, shall be processed, and being found guilty, that they be punished with Death. As also, His *Majesty*, with advice and consent foresaid; Declares, That all Persons who have committed the foresaid Crimes since the seventeenth of *February*; one thousand six hundred and forty nine, shall be proceeded against according to this Act; and Ratifies all by-gone Decrees and judicial Proceedings, against any Person committer of the said Crimes since the foresaid date, which have been pronounced and done against the saids Committers, according to this present Act. And Declares, That the pro-

"gister is alwayes before the Thesaurer deput And also they find that be ane act of Secret  
 "Council in the year 1623 upon a letter from the Kings Majestie and upon consideration  
 "of former acts and ordinances ther is a positive rule set down for ranking the officers of  
 "State in all tyme comeing And therin the Clerk Register and Advocat are ranked and  
 "ordained to have place befor the Thesaurer deput And that conforme therto they have  
 "brooked their precedencies In regaird of all which it is thair opinion That it be of new  
 "declared be his Majestie with advice of his Estates of Parliament That the persons and  
 "officers of State above mentioned hes in reason had, and shall in all tyme comeing Have  
 "their Precedencie in maner following To wit The President of the Session the first place  
 "The Clerk of Register the second place The Advocat the thrid place and the Thesaurer  
 "Deput the last Sic subr Crafford & Lindesay I. P. D. Par. And haveing considered the  
 "severall Acts Comissions and Orders mentioned in the said Report They Doe Approve  
 "of the Report abovementioned And accordingly Finds and Declares That the persons and of-  
 "ficers of State abovementioned Hes in reasone had, and shall in all tyme comeing Have  
 "their Precedencies in maner following, To wit; The President of the Session the first  
 "place, The Clerk of Register the second place, The Advocat the thrid place and the The-  
 "saurer Deput the last, Lykas his Majestie with advice of his Estates Doe heirby Decerne  
 "and Ordaine the persons and officers of State aforesaid & their successors in these offices  
 "To conforme themselves in their Precedencies To this present Act as they will be answer-  
 "able."

In reference to this act, see Sir George Mackenzie's works, vol. ii. p. 638.

<sup>282</sup> In reference to this act, see Hume, vol. i. p. 334, *et seq.*



nouncers and executors of the saids Sentences shall never be questioned therefore, in any manner of way, but are, and shall be, hereby secured, no less then if this Act had been of the foresaid date.<sup>253</sup>

217. *Act concerning the several degrees of Casual Homicide.*

OUR Sovereign Lord, with advice and consent of the Estates of this present Parliament, for removing of all question and doubt that may arise hereafter in Criminal pursutes for Slaughter, Statutes and Ordains, That the cases of Homicide after-following; *viz*, Casual Homicide, Homicide in lawful defence, and Homicide committed upon Theeves and Robbers breaking houses in the night; or in case of Homicide the time of masterful Depredation, or in the pursute of denounced or declared Rebels for capital Crimes, or of such who assist and defend the Rebels and masterfull Depredators by Armes, and by force oppose the pursute and apprehending of them, which shall happen to fall out in time comming, nor, any of them, shall not be punished by death: And that notwithstanding of any Laws or Acts of Parliament, or any Practick made heretofore or observed in punishment of Slaughter; but that the Manslayer, in any of the cases aforesaid, be assoilied from any Criminal pursute pursued against him for his life, for the said Slaughter, before any Judge Criminal within this Kingdom. Providing alwayes, that in the case of Homicide casual, and of Homicide in defence, notwithstanding that the slayer is by this Act, free from Capital Punishment; Yet it shall be leisum to the Criminal Judge, with advice of the Council, to fine him in his means, to the use of the defuncts wife and bairns, or nearest of kin, or to imprison him. And His Majesty, with advice foresaid, Declares, that all decisions given conform to this Act, since the thirteenth of *February*, one thousand six hundred and fourty nine years, shall be as sufficient to secure all parties interessed, as if this present Act had been of that date: And that all cases to be decided by any Judges of this Kingdom, in relation to casual Homicide, or Homicide in defence, committed at any time heretofore, shall be decided as is above expressed.<sup>254</sup>

218. *Act for Poynding upon Sheriffs and Commissars Decreets.*

OUR Sovereign Lord and the Estates of Parliament, considering, That albeit by Act of Parliament, of the date the ninth of *July*, one thousand six hundred and six years, Letters of Horning are Ordained to be directed by deliverance of the Lords of Session upon Sheriffs, Commissars, and other inferiour Judicatories their Decreets, upon the simple Charge therein mentioned: Yet, the Act bears no warrand for Letters of Poynding to be granted by the deliverance foresaid upon these Decreets; whereby the parties interessed, obtainers of the Decreets, are oft-times prejudged of their payment, when these parties, against whom these Decreets are obtained, do flit or remove out of the Shire or Jurisdiction of the Judge before whom the saids Decreets are given. Therefore His Majesty, with advice of the saids Estates, ratifies the Act of Parliament above-mentioned, in the whole heads and points thereof: And for remedy of the prejudice foresaid, Ordains Letters of Poynding to be direct by deliverance of the Lords of Session, at the instance of the Parties interessed, upon the saids Sheriffs, Commissars, and other inferiour Judges their Decreets contained in the foresaid Act. Sicklike, and in the same manner, as Letters of Horning are appointed by the said Act to pass upon the same De-

<sup>253</sup> In reference to this act, see Hume, vol. i. p. 569, *et seq.* The punishment of blasphemy is modified by 6th Geo. IV. ch. 47, and 7th Will. IV. ch. 5.

<sup>254</sup> In reference to this act, see Hume, vol. i. p. 241, *et seq.*, and Alison's Principles, p. 16, *et seq.*

creets, that thereby the Parties may have real execution, as well as personal upon their Decreets foresaid. Likeas, His *Majesty*, with advice and consent foresaid, Declares, That all execution of Poynding, legally used upon the saids Decreets since the twelfth of *June*, one thousand six hundred and fourty nine years, shall be valid and sufficient; and the Parties, Messengers and others, Executors and users thereof, shall never be questioned, nor any Process sustained against them therefore, either Civilly or Criminally, before any Judge whatsoever; But prejudice alwayes to Parties against whom Poynding have been used, upon reduceable or unwarrantable sentences, to pursue repetition as accords of the Law.<sup>255</sup>

239. *Act appointing the Pursuer of the Thief, to have the Goods stolen from him, restored.*

OUR Sovereign Lord understanding, that when Thieves are taken and execute for Theft, or declared Fugitives, their whole Estate, and the goods stolen also, doth fall to his *Majesty* and to the Lords of Regalities, and other Justitiars pretending right to the saids stolen goods. For remeed whereof, His *Majesty*, with advice and consent of the Estates of Parliament, Statutes and Ordains, That any person having goods or gear stolen from him, and having pursued the stealer thereof, shall have his own goods again, where ever the same can be apprehended: and where the stolen goods cannot be had, the Pursuer of the Thief, shall have the just value of the goods and gear stolen from him, out of the readiest of the Thiefs goods, with the expences waired out by the Pursuer, he alwayes pursuing the Thief, *usque ad sententiam*; Reserving alwayes to the Sheriff or other Magistrates, and taker of the Thief, the expences waired out by them in taking and putting the Thief to execution.

242. *Act anent the Fewers and Vassals of Kirk-lands.*

OUR Sovereign Lord, with advice and consent of the Estates of this present Parliament, considering, That whereas by the general Surrender of Kirk-lands, and Erections made by the Superiors and Titulars thereof, in favours of His *Majesties* dearest Father of ever blessed memory; It is specially provided, that the said Superiors and Titulars, notwithstanding their Surrender foresaid, shall have right to the Few-ferms and Duties of the Vassals and Fewers of the said Kirk-lands and Erections, till the Kings *Majesty* make payment to them of the prices of the saids Few-ferms and Duties, modified by the Lords and others of the Commission for Surrenders and Teinds. And sicklike the Fewers and Vassals of the saids Kirk-lands and Erections, are obliged by their new Infeftments under the great Seal, to pay the saids Few-ferms and Duties to the Kings *Majesty* and His Successors; and so against reason may appear to be lyable to double payment thereof: It is therefore Statute and Ordained by His *Majesty*, with consent foresaid, That the saids Fewers and Vassals of Kirk-lands and Erections, their Heirs and Successors, shall be obliged to make thankful payment of the saids Few-ferms and Duties contained in their Infeftments; and whereof the said Superiors and Titulars have been in possession preceeding the Surrender foresaid, to the saids Superiors and Titulars, their Heirs and Successors, ay and while they get payment of the prices modified by the saids Lords and others of the Commission foresaid, according to the Act of Parliament, one thousand six hundred and thirty three years. And that Letters of Horning and Poynding shall be granted to that effect, without prejudice alwayes to His *Majesty*, and His Successors, of the Superiority of the saids Fewers and Vassals surrendered in manner foresaid, and without prejudice to them of their Infeftments taken to be holden of His *Majesty* and His Successors.

<sup>255</sup> The act here ratified is 1606, ch. 9, which see. See also 1st and 2d Vict. ch. 114.

Likeas it is Declared, That the said Fewers and Vassals of Kirk-lands and Erections have been, *in bona fide*, in payment of the saids Few-ferms and Duties to the saids Superiors and Titulars of all times by-gone, according to the provisions contained in the said general Surrender. It is alwayes provided, that this Act shall not be prejudicial to an Act past by this Parliament in favours of the Earl of *Lauderdail* of the Lordship of *Musleburgh*, of the date the ninth day of *April* last.

243. *Act concerning the Registration of Comprisings.*

OUR Sovereign Lord, with consent of the Estates of Parliament, considering, that the Registration of Comprisings, was only established by an Act of Secret Council, and never authorized by any Law, or Act of Parliament, and that the Registration thereof did put the Lieges to unnecessar charges; neither adding to the validity of the Comprisings, nor to the benefit of the Comprisers: Hath therefore discharged, and by these presents discharges all Registration of Comprisings, with all Gifts, Acts of Council, and other warrands and Custome whatsoever, granted and observed, at any time heretofore thereanent; and by thir presents Ratifies and approves the Custome observed these many years past; whereby, in place of the said Registration, a short Record of all Comprisings of Lands, Teinds and others, and of the Comprisers names and designations, the Defenders names, the Debts for which the Comprising is deduced, the Messengers and Clerks names, the date of the Executions, the Witnesses names thereto, and of the Superiors of whom the Comprised Lands are holden, hath been made in a Book by the Clerk of Register and his Deputes, at the allowing of the saids Comprisings, (for which Allowance and Recording, there is only fourty shillings *Scots* to be paid) and which Custome is very useful and necessar for information of the Lieges. And therefore His *Majesty*, with advice and consent foressaid, Ratifies and approves the foressaid Custome, and Ordains all Comprisings formerly deduced and not allowed and recorded in manner above-written, to be brought in to the Clerk of Register and his Deputes, within threescore dayes after the publication hereof, and all Comprisings to be led and deduced hereafter, to be brought in to the said Clerk of Register and his Deputes, within threescore dayes after the date thereof. With certification, that if they be not allowed and recorded within the said space, any other Comprising though posterior in date, yet if it be allowed and recorded before the prior Comprising, the same shall have preference according to the date of the Allowance and Record; but prejudice alwayes to any further diligence by Infestments, or charges against the Superior, according to the priority or posteriority thereof, *prout de jure*.<sup>256</sup>

244. *Act concerning Heritable and Moveable Bonds.*

OUR Sovereign Lord, with advice and consent of His Estates of Parliament, for many just and reasonable causes moving Him, Statutes and Ordains, That all Contracts and Obligations for Sums of money payable to parties at any time, made and dated since the sixteenth day of *November*, one thousand six hundred and fourty one, or to be made in time coming, containing clauses for payment of Annualrent and Profit, are, and shall be, holden and interpret to be Moveable Bonds, except in these cases following; *viz.* That they bear an express obliegemennt to infest, or that they be conceived in favours of Heirs and Assignes, secluding

<sup>256</sup> This act is the foundation of a register which afterwards became the Register of Adjudications, and is now almost entirely superseded by 1672, ch. 45; Regulations concerning the Session 1695, art. 24; 1st and 2d Geo. IV. ch. 38, § 18; 1st and 2d Vict. 118, § 14.

Executors, in either of which cases, Ordains the Sums to be Heritable, and to pertain to the Heir; otherwayes to be confirmed by the Executor, and to appertain to the nearest of Kin, and to the Defuncts Executors and Legators, according to the Law and practick of Moveables, Declaring alwayes, that all such Bonds, *quoad fecum*, shall remain in the same condition as they were before the said sixteenth of *November*, one thousand six hundred and fourty one, not to fall under the compass of single Escheat, nor shall any part thereof pertain to the Relict, *jure relictae*, where the bonds are made to the Husband, nor to the Husband, *jure mariti*, where the Bonds are made to the Wife, unless the Relict, or Husband, have otherwayes right and interest thereto, Declaring nevertheless, that this provision shall no way prejudge Wife, nor Husband, and their Executors, of their respective Titles and interests to the by-gone Annualrents of the saids Bonds, resting before either of their deaths.<sup>267</sup>

246. *Act against Clandestine and unlawful Marriages.*

OUR Sovereign Lord, and the Estates of this present Parliament, considering how necessary it is, that no Marriage be celebrate, but according to the laudable order and constitution of this Kirk; and by such persons, as are by the Authority of this Kirk warranted to celebrate the same. And that notwithstanding thereof, sundry, either out of disaffection to the Religion presently professed in this Kingdom, or being desirous to eschew the Censures of this Kirk, or to satisfie their promise of Marriage formerly made to others, or to decline the concurrence and consent of their Parents or others having interest, or out of some other unlawful pretext, do procure themselves to be Married, and are Married either in a Clandestine way, contrary to the established order of the Kirk, or by Jesuits, Priests, Deposed or Suspended Ministers, or any other not authorized by this Kirk. Therefore His *Majesty*, with advice of His saids Estates, Statutes and Ordains, that whatsoever person or persons, shall hereafter Marry or procure themselves to be Married in a Clandestine and in orderly way, or by Jesuits, Priests, or any other not authorized by this Kirk; that they shall be imprisoned for three moneths, and beside their said imprisonment shall pay, Each Nobleman, one thousand pounds *Scots*; each Barron and landed Gentleman, one thousand merks; each Gentleman and Burgess, five hundred pounds; each other person, one hundred merks; and that they shall remain in Prison, ay and while they make payment of these *respective* penalties above-mentioned, which are hereby ordained, to be applied to Pious uses, within the several Paroches where the saids persons dwels. And that the Celebrator of such Marriages be banished the kingdom, never to return therein, under the pain of Death. Likeas His *Majesty*, with advice foresaid, Prohibites and Discharges all men and women, having both their ordinar residence within this Kingdom, to get Marriage to themselves with others within the Kingdom of *England*, or *Ireland*, without Proclamation of Banns here in *Scotland*, and against the Order and Constitution of this Church, or Kingdom, under the pains following, *viz.* For each Nobleman so Married, one thousand pounds; for each landed Gentleman, one thousand merks; for each Burgess, five hundred pounds; and for each other Substantious person, five hundred merks; for an Yeoman, one hundred pounds; for each person of inferior quality, one hundred merks; the one half of the which penalties, shall belong to the Kings *Majesty*, the other to the Paroch, or Paroches where the Married Parties did reside; and Ordains His *Majesties* Advocat, and the Procurator for the Kirk, to pursue before the civil Judge, the Parties Contraveners of this Act, or either part thereof, for payment of the penalties *respective* above-mentioned; and in case of the poor condition of

<sup>267</sup> In reference to this act, see Ersk., b. ii. tit. ii. § 10, *et seq.*

any man, Married in manner foresaid, Ordains him to be punished with Stocks and Irons: which pains corporal and pecunial, shall no wayes be prejudicial to, or derogat from, the Order and Censures of the Kirks, to be inflicted against the Delinquents.<sup>258</sup>

260. *Act Ratifying the Privileges of the Colledge of Justice.*

OUR Sovereign Lord considering, that nothing is more necessary and of more universal concernment, then the administration of Justice; and in order thereto, that the Judges, Advocats, Clerks and other Members of the Supream Judicatory, should be faithful, able and qualified persons; and for their encouragement to serve the Countrey in their respective stations and places, and to undergo the great toil, trouble and expence of time, and otherwayes for inabling them for, and during their service therein, It hath been the wisdom and practice of all Princes and Nations, and in special, of His *Majesties* Royal Progenitors, to grant to them diverse Liberties and Priviledges, as is evident by many Acts of Parliament and Statutes concerning the Priviledges and Immunities of the Colledge of Justice, and Members thereof, Granted, Renewed and Ratified from time to time. Therefore His *Majesty*, with advice and consent of His Estates of Parliament, Ratifies and Approves all and whatsoever Liberties, Priviledges and Immunities, given and granted by His *Majesties* Royal Predecessors, to, and in favour of, the said Colledge of Justice, and of the Senators, Advocats, Clerks, Writers to the Signet, and remanent Members of the same, or whereof they have been in use or possession in any time by-gone, together with all Laws, Acts of Parliament, Statutes and Constitutions, made and conceived in their favours; Holding and Declaring this present Ratification to be as sufficient as if all the foresaids Priviledges, Freedoms and Immunities, Acts, Statutes and Grants, of, and concerning the same, were in special and at length exprest herein. And His *Majesty* with advice and consent foresaid, Ordains and Declares, That the whole Priviledges, Liberties and Immu-

<sup>258</sup> In reference to this act, see Ersk., b. i. tit. vi. § 11.

<sup>259</sup> The following act appears in Mr Thomson's edition of Scots Acts, but not in the edition of 1681.

"CCXLVII. Act anent the redemption of the fee of Lands granted under reversion from  
"the Aires & Assignayes of the fiars.

"OUR SOVERAINE LORD Considering that infeftments of fie hes been in use to be  
"and are daylie granted be Parents and others to their eldest Sonnes and other neir rela-  
"tions reserveing their ouny lyverents & under reversion and with power to them and  
"their assignayes to redeeme the lands and others contained in the saids infeftments from  
"the saids persones to whom the fie is granted at any tyme dureing the life tyme of the  
"granters for payment of a rose noble, or some such lyk soume. And sometymes through  
"the informality & unskilfulnes of Notters and others Writters of such Writts & rights,  
"mention is not made in the said reversions, of the aires & assignayes of the receavers of the  
"saids rights And that they should be redeemable from them and their foresaids. Thairfor  
"his *Majestie* with advice and consent of the Estates of Parliament for removeing and pre-  
"veening all questions that hes been or may arise upon the occasion foresaid Doe Declare  
"Statute & Ordaine That in all caces wher any infeftment of fie hes been alreadie granted  
"or shall be granted at any tyme heirafter beirand or affected with a reversion clause pro-  
"vision or condition of reversion, and power to any person and his assignayes dureing his  
"lifecycle to redeeme from the persones to whom the fie is granted It wes and shall be  
"lawfull to the said persones & his assignayes dureing the tyme foresaid to redeeme the  
"lands and others contained in the saids fie infeftments not only from the said fiar himself  
"but from his aires & assignayes tho they be not exprest unlesse it be expreslie provydit  
"that it shall be lawfull only to redeeme from the fiar himself & not from his aires. And  
"it is ordained that in all such caces the Lords of Session and other Judges shall proceed  
"and determine conforme to thir presents."



Commodities whatsoever, Exported, in any other Ships or Vessels, then such as do truly and only belong to the Natives and Inhabitants of this Kingdom, shall be lyable to double Custom and pay accordingly, whether the saids Goods appertain to Natives or Aliens. And it is further Enacted and Ordained by His *Majesty*, with advice and consent foresaid, that at and after the said day, and thence forward, all Ships and Vessels belonging to this Kingdom, shall be Navigated only by *Scots-men*, dwelling in *Scotland*, at least the Master and three fourth parts of the same being such, under the pain of being esteemed Forraign Vessels, and paying double Custom, for all the Goods and Commodities, Imported or Exported within the same. And for preventing of all fraud, which may be used in the buying of Forraign Ships, It is Statute and Ordained by His *Majesty*, with consent foresaid, that from, and after, the said day, no Ship whatsoever shall be deemed, or pass as a Ship belonging to *Scotland*, or enjoy the benefit of such a Ship or Vessel, untill such time that he or they, claiming the same to be theirs, shall make appear to the chief Officer or Officers of the Customs at *Lieth*, he or they residing in any place betwixt *Berwick* and *Stirling* on the South side of *Forth*, and to the chief Officer or Officers at *Burntisland*, he or they residing in any place betwixt *Stirling* and *Fife-ness* upon the North-side of *Forth*, and in case of their abode in more remote places, to the Officer or Officers of the Port next to the place of his or their abode, that they or he are not Strangers, and shall have taken an Oath before such Officer or Officers, who are hereby authorized to administer the same, that such Ship or Vessel was *bona fide*, and without fraud, bought by him or them, for a valuable consideration, expressing the Sum, Time, Place and Persons, from whom it was bought, and who are his Partners (if he any have) All which Partners shall be lyable to take the said Oath before the chief Officer or Officers of the Customs *respective*, as said is; and that no Forraigner, directly nor indirectly, hath any part, interest or share therein; and that upon such Oaths, he or they shall receive a Certificat under the Hand or Seal of the said chief Officer or Officers of the Port next the abode of the persons so making Oath, whereby such a Ship may for the future passe, and be deemed as a Ship belonging to the said Port, and enjoy the Priviledge of such a Ship or Vessel; and the said Officer or Officers, shall keep a Register of all such Certificats, as he or they shall so give, and return a Duplicat thereof to the chief Officers of the Customs at *Lieth*, for such as shall be granted in all the other Ports of this Kingdom, together with the names of the person or persons, from whom such Ships were bought, and the sum of money which was paid for the same; as also the names of all such persons as are Partners, if any such be. And it is further Enacted by His *Majesty*, with consent foresaid, that if any Officer of the Customs, shall from and after the said day, allow to any Forraign Ship or Vessel, the priviledges due to a *Scots* Ship, till such Certificat be by them produced, or such Proof and Oath taken before them, or such as they shall appoint to receive the same, and to examine whether the Master and three fourth parts of the Mariners at least be Natives and Inhabitants within this Kingdom; that for the first offence, such Officer or Officers shall be put out of their Offices or Places. And it is further Statute and Ordained, that no Merchants belonging to this Kingdom, shall employ any Alien, or person not born within this Nation or naturalized, or made a free Denizen thereof, from and after the said day, as Factor in any place beyond Seas, for the use and account of the Merchants of this Kingdom, under pain of a pecuniary Muilt, to be paid by him, or them that shall employ him: which sum shall be imposed at the discretion of the Council of Trade, the one half thereof to His *Majesty* and Successors, and the other half to him or them that shall inform and pursue for the same. It is alwayes hereby provided, that this Ac, nor any Clause therein contained, extend

not to, or be meant to restrain or prohibit the Importation of any of the Commodities of *Asia, Africa, or America*; as also of the Commodities of *Musco and Italy*, from such Ports and places, and in such Ships and Vessels, as may be gotten most conveniently, until such time as the Merchants of this Kingdom, have actual Trade to these respective places; and that the same be prohibited by Act of Parliament, Privy Council, or Council of Trade. It is hereby Declared, That it shall be lawful to import any sort of Corns, in time of dearth, from any place or places, in any Ship or Vessel whatsoever, without being lyable to Confiscation, double Custom, or any other Penalty contained in this present Act; the dearth and necessity of import being alwayes cognosced and declared, by a publick Act of the Privy Council, or Council of Trade.<sup>261</sup>

282. *Act against Swearing and Excessive Drinking.*

OUR Sovereign Lord, being desirous that all His Subjects within this Kingdom, may leid a quiet and peaceable life under His Government, in all godliness and honesty; And in order thereto, having resolved to curb and suppress all sort of sin and wickednesse, and especially these abominable and so much abounding sins of Drunkenness and all manner of Cursing and Swearing. Therefore our said Sovereign Lord Ratifies and Approves all Acts of Parliament, made in former times against the said crimes, or either of them. And further Declares, That each person, who shall Blaspheme, Swear or Curse; and whosoever shall Drink into excess, shall be lyable in the pains following, according to the quality of the offenders; *viz.* Each Nobleman in twenty pounds *Scots*, each Barron in twenty Merks, each Gentleman, Heritor or Burgess in ten merks, each Yeoman in fourty shillings, each Servant in twenty shillings *toties quoties*, each Minister in the fifth part of his years Stipend: and that the saids Fines and Penalties be uplifted and disposed upon, in manner contained in the Act and Instructions anent the Justices of Peace. And if the party Offender, be not able to pay the Penalties foresaid, then to be examplarily punished in his body, according to the merit of his fault.<sup>262</sup>

283. *Act concerning Arrestments.*

OUR Sovereign Lord, considering the great charges that Creditors are put to, by Comprising of sums owing to their Debtors, by vertue of Heritable Bonds, Contracts and other Writs bearing payment of Annualrents: which in respect of the Obliegment for Annualrents, were not in former times Arrestable. Therefore the Kings *Majesty*, with advice and consent of His Estates of Parliament, Findes and Declares, that all sums of money which are addebted by Bonds, Contracts and other personal Obliegments, whereupon no Infetments have followed, are, and shall be Arrestable at the instance of any Creditor, notwithstanding that the Bonds, Contracts and other Obliegments bear payment of Annualrents. And the Kings *Majesty*, with advice and consent foresaid, Declares that this shall no wayes change the nature of the saids Sums, nor prejudice the Heir nor any other person their rights to the same as being Heritable, which are hereby Declared to remain in their own nature unchanged by this *Act pro ut de jure*, except that only the same are Arrestable. And it is hereby expressly provided, that all Arrestments and Executions thereof, since the twenty ninth day of *July*, one thousand

<sup>261</sup> For a commentary on this and other acts on the same subject, subsequently passed by the Legislature, see Bell, Com. vol. i. p. 163, *et seq.*

<sup>262</sup> In reference to this act, see Hume, vol. i. p. 469 and 572, and note annexed to act 216 of this Parliament.



six hundred and forty four years, used conform to the tenor of this Act, shall be as valid and sufficient, as if this present Act had been of the said date ; But prejudice alwayes to the Creditors to Comprise the saids Heritable Sums, if they shall choose rather to Comprise then to Arrest.<sup>263</sup>

284. *Act for Planting and inclosing of Ground.*

OUR Sovereign Lord, considering how many laudable Laws have been made, by His *Majesties* Royall Progenitors, for Parking and Inclosing of Ground, and Planting of Wood, and for preserving of the same : and finding the great prejudice have followed upon the not dew observance of so notable and necessar Laws. And how expedient, fit and necessar it will be, for the good of this His *Majesties* ancient Kingdom, especially for Shipping and Building, that Timber be Planted ; and how advantageous it is for the increase of Corns and Cattel, and the sowing of Lint and Hemp for Manufacturies, that Parking and Inclosings be made. Doth therefore with consent and advice of His Estates of Parliament, Revive the ninth Act of the fourth Parliament of King *James* the first, of Blessed memory, Entituled, *An Act for Planting of Woods, Forrests and Orchards*, and all other Acts made for that effect, by His *Majesty* or any other His Royal Predecessors ; and Ordains the same to be put to execution in time comming, conform to the Tenor thereof, in all points ; with this addition. Likeas His *Majesty* with advice of His saids Estates of Parliament, Doth hereby Statute and Ordain, that every Heritor, Liferenter, and Wodsetter (according to the qualifications under-written) within His said ancient Kingdom of *Scotland*, with one thousand pounds of yearly valued Rent, shall inclose four Aikers of Land yearly at least, and plant the same about with Trees of Oak, Elme, Ash, Plain, Sauch or other Timber, at three yards distance. And that all other Heritors of greater or lesse Rent nor the said sum of one thousand pounds money foresaid, do Plant, Inclose and Ditch yearly, moe or fewer Aikers, according to their respective Rents, for the space of ten years next ensuing ; and that of such Lands as the Heritors shall think most fit for Planting and capable for Inclosing, to be also Planted, Ditched or Inclosed in manner foresaid ; and that the saids Heritors begin to Plant, Ditch, and Inclose, the said ground at the feast of *Michaelmesse* next to come, and uphold the same in time comming. And for the futher incouragement of the saids Heritors, Wodsetters and Liferenters, to go about the ready observance of the said Act, liberty and power is granted to them, at the sight of the Sheriffs, Stewarts, Lords of Regalities, Barrons, and Justices of Peace in their respective bounds, to cast about the High-ways to their conveniency, providing they do not remove them above two hundred ells upon their whole ground ; Excepting alwayes herefrom, Barrough and incorporate Aikers, which are no wayes to be Parked or Inclosed, unlesse the Heritors thereof shall think it meet and expedient, And where there are Liferenters upon Lands, It is hereby Declared, that the same shall be done upon the equal charges and expences of the Liferenter and Heritor. And in case of Proper Wodsets, It is also hereby specially Declared, that the same shall be done by the Wodsetter, and the charges thereof is and shall be added to the reversion, and no wayes redeemable, while they make paiment thereof, as well as of the sums for which the Lands are Wodset. And for the better incouragement of Heritors, and for preserving of the said Planting and Inclosures, It is Statute and Ordained, that whosoever shall cut or break any of the saids Trees, (not being the Heritors themselves) shall pay unto the Heritors or persons wronged, twenty pounds for every Tree : or if he be not able to pay the said twenty pounds, it shall be in the power of the party thereby wronged, to make him work six

<sup>263</sup> In reference to this act, see Erskine, b. ii. tit. ii. § 19.

weeks, giving him meat and drink allanerly. And further it is Ordained, that whosoever shall break down the Hedges or Dikes of the saids Parks or Inclosures, or be found within the same, being a stranger, shall be holden and repute a breaker down thereof, and pay five pounds for every fault; or if he be not able to pay the said five pounds, to work ten dayes to the owner of the saids grounds, for meat and drink as said is. And for the greater encouragement of all persons, who shall be vertuously enclined to Ditch Inclose or plant their ground, in manner foresaid, His Majesty, with consent above specified, hath Declared, and by thir presents Declares such parts and portions of their said ground, as shall be so Inclosed and Planted, to be free of all manner of Land-stents, Taxations or Impositions, of whatsoever nature, or Quarterings of Horse in the saids Inclosures, for the space of nineteen years, next after the date hereof; and that at the proportioning of the saids Burthens, the same inclosures shall be exempted and made free thereof accordingly. And also for the better preserving of the saids Inclosures, and of the Trees and Planting to be set about the same, It is Statute and Ordained, that ilk Heritor, Tennant and Cottar, keep their Cattel and Goods, out of their neighbours Inclosures at all times, that their Trees, Planting and Ditching, be no wayes Damnified or prejudged, under the penalty of five pounds for ilk contravention, *toties quoties*, to be paid to the party damnified. And further Statutes and Ordains, That where Inclosures fall to be upon the border of any persons Inheritance, the next adjacent Heritor shall be at equal pains and charges in Building, Ditching and Planting that Dike which parteth their Inheritance. And Recommends to all Lords, Sheriffs and Baylies of Regalities, Stewarts or Stewartries, and Justices of Peace, Baylies of Burroughs, and other Judges whatsoever, to see this Act put in execution, and to grant Processe at the instance of the Parties damnified and prejudged, and to see them repaired, after the form and tenor of this Act above-written, in all points.<sup>264</sup>

331. *Act in favours of Laick Patrons, of Provestries, Prebendries, Chaplanaries and Alterages.*

OUR SOVERAIGNE LORD, with advice and consent of His Estates of parliament, Ratifies and Approves the Act of Parliament, made by King James the sixth, His Majesties Grand-Father of eternal memorie, Parliament first, *Chap. twelfth, Anent Provestries, Prebendries, Alterages, Chaplanries, and Collegiat Kirks*, pertaining to laick Patrons, together with the Act of Parliament twelfth *Chap. one hundred and fifty eight*, Ratifying the same; and Ordaines the saids Acts to have full force and effect in all time coming; with this Declaration alwayes, That in respect the Vassals which held Lands of the saids Provests, Prebendars, and others foresaid, are put to a great uncertainty of their Superiors, it not being known to them who are provided to the saids Provestries, Prebendaries, Chaplanries, Alterages, and others foresaid, by reason there is no publick Register, to the which they may have recourse for knowledge and notice thereof, and that the most that they can know by any Register, is the Infestments and Seizings, made to those who are laick Patrons holding of His Majestie. Therefore, for securing of the Vassals, who hold Lands, Milnes, Fishings, Tenements, Annual-rents or others whatsoever, of the saids Provestries, Prebendaries, Collegiat Kirks, or of Chaplanries, Alterages, and others of that nature, at any time of before; It is Statute and Ordained, that the entry of the saids Vassals by Retour,

<sup>264</sup> This act was ratified by 1669, ch. 38, and 1685, ch. 49, which see. See also note annexed to 1669, ch. 37, and *Magistrates of Kilsenay v. Johnston*, 26th February 1824, 2 S. & D. See also *Erskine*, b. ii. tit. vi. § 4.

Precept of *Clare constat*, Resignation, Comprising or otherwayes whatsoever, shall pertain to the laick-Patrons and their successors, who stand infest in the said laick-Patronages, holding immediatly of His Majestie; and that the entry of the Vassals by them, shall be as valid and sufficient to the saids Vassals, receivers thereof, as if they were entred by the Titulars of the saids Provestries, Prebendries, Alterages, Chaplanries, and others foresaids. And that the saids laick-Patrons, shall be in all time coming in their place, as Superior to the saids Vassals, and to have the same power to give Infestments to His Majesties Subjects, upon Retour or by precept of *Clare constat*, or by Resignation, Comprising, or any manner of way, with Gifts *De novo damus*; and that without consent of persons provided, or to be provided, to the saids Provestries and prebendaries of Collegiat Kirks, Alterages, Chaplanries, or other Titulars of Collegiat Kirks; and also without consent of the Chapter or Convent of the saids prebendaries thereof, or most part of the same, which of before was in use and custom. Whereanent, and anent all Acts in the contrair, His Majestie, with consent foresaid, dispences for ever, Reserving alwayes to the Titulars of the saids Provestries, Prebendaries, Alterages, Chaplanries, and others foresaids, the Fruits, Rents and Emoluments of the saids Provestries, Prebendaries, and others foresaids, which are no wayes prejudged by this present Act. It is hereby further Statute and Ordained, with advice and consent foresaid, where there are any Prebendaries, Chaplanries, Alterages, or other foundations of that nature above-mentioned, founded, and situated within any Burgh Royal of this Kingdom, that the Provest, Baillies and Council of that Burgh, where the same are founded, are and shall be in all time coming, only undoubted Superiors, by whom and by no others, the Vassals and Tennants shall enter in manner above-specified; the saids Provest, Baillies, and Council having been formerly Patrons of these Chaplanries.<sup>265</sup>

338. *Commission and Instructions to the Justices of Peace and Constables.*

OUR Sovereign Lord, taking to His Royal consideration, how much the appointing of Justices of Peace and Constables within all the Shires of this Kingdom, under the Reign of His *Majesties* Royal Predecessors, did contribute to the Peace, Quiet and good Government thereof, and to the speedy and impartial execution of Law and Justice to all persons subjected to their jurisdiction and power. Therefore, and for the furtherance of these ends in the future, His *Majesty*, with advice and consent of His Estates of Parliament, Doth hereby Statute and Ordain, That in all time coming, there shall be Justices of His *Majesties* Peace appointed within each several Shire of this Kingdom, to be nominate, from time to time, by His *Majesty* and His Royal Successors: Which Justices of Peace are hereby impowered to administrate Justice, and put His *Majesties* Laws in execution, according to the particular Instructions after-mentioned, *viz.*

The Justices of Peace at their first sitting, shall take the Oath of Allegiance, and Oath *De fidei administratione*: which at first shall be administrate to them by the Sheriff or his Depute of ilk respective Shire, or in their absence, by the President and Conveener for the time.

Followeth the Oath of Allegiance.

I        *For testification of my faithfull Obedience to my most gracious and redoubted Sovereign, Charles, King of Great Britain, France and Ireland, Defender of the Faith, &c. Affirm, testifie and declare by this my solemn Oath, that I acknow-*

<sup>265</sup> In reference to this act, which ratifies 1567, ch. 13, and 1592, ch. 89, see these acts. See also Erskine, b. i. tit. v. § 12.

*ledge my said Sovereign, only Supream Governour of this Kingdom, over all persons, and in all Causes, and that no Forraign Prince, Power or State, nor Person Civil or Ecclesiastick, hath any Jurisdiction, Power or Superiority over the same : And therefore I do utterly renounce and forsake all Forraign Jurisdctions, Powers and Authorities ; and shall at my outmost power, defend, assist and maintain His Majesties Jurisdiction foresaid against all deadly, and shall never decline His Majesties Power nor Jurisdiction, as I shall answer to GOD.*

Followeth the Oath *De fidei administratione.*

**I** *As one of the Commissioners and Justices of Peace, within shires, according to my knowledge, wit, and power; shall do equal Right both to rich and poor, conform to the Laws, Statutes and Customs of the Land : and that I shall not be of Council with any person in any quarrel or matter depending before me ; and that I shall every Quarter keep the Sessions, or oftner, as I shall be required, not having any just impediment in the contrair, and shall faithfully and truly discharge my duty as a Justice of His Majesties Peace, and shall leave nothing undone that may tend to the preservation of the same : So help me GOD.*

The Justices of Peace, in each respective Shire, shall meet and convene together, four times in the year, viz. On the first Tuesday of *May*, the first Tuesday of *August*, the last Tuesday of *October*, and the first Tuesday of *March*. In which Sessions, they shall administrate Justice to the people in things that are within their Jurisdiction, and punish the guilty, for Faults and Crimes done and Committed in the preceeding Quarter : and by mutual and conjunct advice, make and rectifie Ordinances for the Fees of Servants, Shearers in Harvest and other Labouring men, appoint Prices for all Handycrafts, elect or continue Constables or other Officers, and dispose of the Fines and Mulcts for Paiment of the constables, Clerks and other Officers Fees, and imploy the remnant on such necessary and pious uses, as they shall find most expedient ; and shall have power to continue the said Sessions, or to adjourn the same to such dayes and place as shall be most convenient.

And one Justice shall have power upon complaint of any person, being threatned and fearing to be wronged, to bind the party complained upon, under such a pecunial sum to keep the Peace, as he shall think fitting : As also to commit him until Surety be found by him, the said Complainer alwayes giving his oath before the Justice, that he hath just cause to dread him harm. And albeit no person complain, yet if the Justice be credibly informed of appearance of trouble betwixt any parties, he shall bind them to the peace in manner foresaid, except the parties declare upon their consciences, that neither of them bear any grudge to other ? And all such Bonds shall be kept and Recorded by him, and he shall make delivery of the same to the Clerk of the Peace at the next Sessions, to be kept and registrate by him.

If any person being charged to make his appearance before a Justice of Peace, shall refuse or delay without cause, if the party be a Landed Gentleman, whose Rents exceed ten chalders of victual, or one thousand Merks of silver, then the Justice (whose command is contemned) shall inform the same to some of His *Majesties* Privy Council, to the effect, the party of the quality foresaid may be called and fined for his disobedience ; and if the disobeyer be of a meaner degree, the Justice of Peace shall hereby have power to command the next Constable, or in absence of a Constable, his own servant, or any other person having a Warrant in

writ subscribed by the said Justice of Peace, with assistance of the Country, to bring any such party before him.

If either the Sheriff or Bailly shall condemn any person in Blood-wyt: or other-ways convict him in any pain proper for him to impose, the Justice shall have no power of new to fine that Offender for that offence; but if they shall find him not condignly punished, in regard of the offence committed by him, they shall then inform His *Majesties* Council thereof, that they may take order therewith; and if there be no satisfaction made by the Sheriff or Bailly to the Party offended, the Justices may modify a reasonable satisfaction to the Party offended, he pursuing therefore before them: And if they find the satisfaction decreed by the Sheriff or Bailly, in favours of the said party offended, not condign, nor answerable to the offence and wrong sustained, then they shall also inform His *Majesties* Council thereof, that they may take order therewith as appertaineth.

If either Sheriff or Bailly or their Deputes, by collusion with the Delinquent, shall suffer any person guilty, to be quitted or cleared by an Assize, the Party once cleared, is not to be brought further in question before the Justices, but upon their information, the Judges are to be called, censured and severely punished by His *Majesties* Council.

The saids Justices shall hereby have power to proceed upon all persons committing Riots, and breaking the Kings Peace under the degree of Noblemen, Prelats, Councillors and Senators of the Colledge of Justice, and to punish and fine according to the quality of the Crime, and the Estate of the Offender. And if any of the saids persons, being Charged to compear before the saids Justices, shall disobey, the Summons being indorsed, the lawfull Citation verified, and Fact proven, the Justices shall punish and fine the not compearing, according to the quality of the Crime and Estate of the Offender. And for the more clear determination of the order which shall be kept by the saids Commissioners, in the deducing of any such process, Our Sovereign Lord, with advice of His Estates, Declareth, That it shall be lawfull to the saids Justices, whensoever they have any occasion to move any action against Parties, for committing any like Fact or Riot, to refer the first Summons to the Parties oaths of verity, failzeing of other lawfull probation; who being personally summoned by that first Citation, shall be holden as confest, and Decreet to be pronounced against him, conform to the Libell and Summons. And if he be not personally summoned by the first Citation, the saids Commissioners shall be holden to cause Summon him of new again, by a second Summons at his dwelling place; which two Citations shall be as sufficient to infer Decreet and Sentence upon the Libell against him, as if he were apprehended personally. And which Sentence given after the manner and form of probation above-written, His *Majesty*, with advice foresaid, Authorizes and Sustains as good and lawfull in themselves. And as concerning these Persons of higher degree, the saids Commissioners shall use all their power for preventing and staying of the Riots, commanding the attempters in His *Majesties* Name to cease, and to find Caution for keeping of the Peace, and for their compearance before His *Majesties* Council, And if any person being charged to find Caution, and refuse it, or delay to do the same, and in the mean time contraveeneth the said Charge, by committing of some Deed betwixt the time of the Charge and finding of the Caution, nevertheless he shall be answerable for the pain, from the date of the Charge, likeas if Caution had been then found.

The saids Commissioners shall put His *Majesties* Act of Parliament to due and full execution against wilfull Beggars and Vagabonds, solitary and idle Men and Women without Calling or Trade, lurking in Alehouses, tyed to no certain services, repute and holden as Vagabonds; and against those persons who are commonly called *Ægyptians*, and they shall punish and fine their Ressetters and Setters of houses to them accordingly, by such competent pains as is proper for them to enjoyn.

The saids Commissioners and Justices of Peace are hereby authorized and empowered, to give order (as they shall think most convenient, and with least grief to the Subjects) for mending of all Highways and Passages, to or from any Mercat-town or Sea-port within that Shire, and shall call before them all such persons as shall strait these Passages (or otherways by casting of Ditches or Fulsies through the same) shall make these High-ways noisome and troublesome unto passengers, and shall punish and fine them according to the quality of their offence. And to the effect it may be known of what breadth all common High-ways should be to Mercat-towns, Our Sovereign Lord, With advice foresaid, Declareth, That the same should be of twenty foot of measure in breadth at the least, and where any are of larger breadth, they Ordain the same so to remain unaltered or straitened, and that the saids Justices maintain the same, with all other Wayes from any Town in the Paroch to the Paroch Churches, in the estate as they are: And where they find any necessity of other Wayes from any Town in the Paroch to Paroch Churches, they shall inform His *Majesties* Secret Council thereof, who shall give them (after sufficient information) their direction thereanent; according whereunto, they shall be holden to proceed. And if any person refuse to concur for mending of High-ways and Passages, the saids Justices shall have power to censure and punish them according to their discretion; with provision alwayes, that if in their proceedings therein, they use such severity or rigour as may move just complaints against them, they shall be censured therefore by His *Majesties* Secret Council as appertaineth.

The saids Justices shall put His *Majesties* Acts of Parliament to execution, against Cutters and Destroyers of Planting, Green-Wood, Orchards, Gardens, Haynings, Breakers of Dove-houses and Cunninghares, Stealers of Bees and Bee-hives, users of unlawfull Games with Setting Dogs, Slayers of red and black Fishes and Smolts, in forbidden time, Foulers fouling in other mens Lands, Makers of Moorburn and Mosseburn, Setters of Crooes and Nets ip Waters and Dames, having, and keeping of Crooes and Yairs in forbidden time, and shall proceed against them accordingly. And for their better warrand to proceed in the premisses, it is His Highnesse pleasure that Commissions be granted to the saids Justices of Peace, to try and punish the violators of the saids Acts; in the tryal whereof they shall proceed by witnesses, or by oath of Party; and the punishment to be inflicted by them, shall be a pecunial sum, apswerable to the circumstance of the offence, and quality of the offenders; with special provision, that their Censures and Punishments shall extend against none, but those against whom by priviledge of their Instructions they may lawfully proceed. And also with provision, that the saids Commissions be not extended to any persons, who shall be arrested and conveyened for the saids crimes, before any other ordinary Judge. It is also provided, that the ordinance and power contained in this Article, shall no wayes be prejudicial to any other Commissions, or Rights whatsoever, granted to other parties, whereby they have power to proceed and censure the crimes and offences above-written.

*Item*, They shall inform the Kings *Majesties* Council, and His Highness Treasurer, or Advocat, at the least once every year, of Forestallers and Regraters of Mercats, that order may be taken with them, conform to the Acts of Parliament.

It shall not be leasome to any Hoastlar, to resset any Masterless Men and Rebels at the Horn, any Vagabonds, or other persons guilty of known Crimes, or using Stouth and Reaf, under the pains underwritten: To wit, fourty shillings to be incurred by them for the first fault, four pounds for the second, and ten merks for the third, together with the losing the liberty of Brewing: The incurrers of the which pains, shall be punished according to the order foresaid, by the Barrons and Masters of the ground whereupon the Hoastlar dwelleth, within the space of fifteen dayes after the committing of the Fact; and if the saids Barrons and Heritors, neglect to do the same, within the said space, it shall be lawful to the saids Justices, to pursue and fine the Delinquents in their Courts, according to the pains foresaid, and to uplift the same from them; without prejudice alwayes of whatsoever Acts, made against the saids Hoastlers in the Barron Court Books, under whom they dwell, bearing any higher pain, than as is set down in this above-written Act, and also without prejudice of all Action; Criminal or Civil, competent of the Law, against the saids Hoastlars, in case they be under the danger thereof, which shall not be taken away by any punishment, set down, and to be inflicted, conform to this Act.

*Item*, They shall inform the Kings Treasurer and Advocat, of breakers and contraveeners of the Acts of Parliament, made against Malt-makers, that the transgressors and contraveeners thereof may be punished conform to the Tenor of the said Acts.

They shall set down order in the Countrey, for Governance in time of Plague, and shall punish severly the disobeyers of the order appointed by them according to the quality of the Delinquent.

They shall appoint at the Quarter Sessions to be kept in *August* and *February*, the ordinary Hire and Wages of Labourers, Workmen and Servants, and who shall refuse to serve upon the price set down by them, shall be imprisoned, and further Punished at their discretion: and to the effect Servants may be the more willing to obey the Ordinances to be made by the saids Justices, for the saids Fees, the saids Justices shall have power to decern, and compel the Master to make payment of the Fees, appointed by their Ordinance, in case the Servants please rather to pursue for the same before them then any other Judge.

The saids Justices shall take notice in all Sherifffdoms, where there are any Goals and Prison-houses within any Burgh, that the same be kept up and not suffered to decay or become ruinous: and if there be any Shire, where there is not any Goal or Prison-house, they shall inform His *Majesties* Council thereof, that they may appoint and give order for building of one within the Head burgh of the Shire, and according to the directions to be given thereanent, the Justices shall be holden to proceed.

And because there be a great many of Prisoners apprehended and committed, who having no means of their own for their maintainance and entertainment, will otherwise famish and starve before they can come to their tryal, who not the lesse, in regard of the crimes committed, can no wayes be put under surety, or otherwayes, in faults of lesse consequence, are unable to find sufficient Caution to be made forth coming and answerable at the next Session; Therefore it shall be lawful to the saids Commissioners and Justices, at their Quarter Session, to rate every Paroch for a weekly proportion, for the entertainment of those poor Prisoners: providing they do not exceed the sum of five shillings Scots money at the

most, nor under one shilling at the least; which sum shall be uplifted for that use by the Minister or Reader who shall serve at every Paroch, from such Deacons, who shall be appointed to collect the same; and the saids sums to be delivered by the Constable of the Paroch, at the Quarter Sessions, in presence of the whole Bench then convened, to such persons as the saids Justices shall trust therewith, and who accordingly, shall make due account in paying the Jaylors such rates as shall be allowed for the poor Prisoners, and making the rest forthcoming for such use and intent of the like nature, as the said Justices shall appoint.

All Magistrates of Burghs, and keepers of any Goals or Prisons, shall receive into their Prisons, all such persons as either shall be brought by Constables, or sent unto them by warrands under the hand of any one Justice of Peace, the saids Justices causing satisfie for their entertainment; and if any Magistrates, or their Jaylors, suffer any persons, committed by the Justices to their Prisons, to escape, they shall be condignly punished therefore, at the discretion of His *Majesties* Council.

*Item*, Our Sovereign Lord, with advice foresaid, Ordains the saids Commissioners, to set a price upon Crafts-mens work, and upon the Ordinars of Penny-Bridals, together with the price of Shearers Fees, and to punish the contraveeners, as appertaineth.

They shall cause sufficient single and double Ale to be brewed in every Shire, and shall appoint Visitors to that effect, with consent of the Barron and Over-lord of the ground: They shall set down Acts against notorious and common Drunkards, and impose sums upon the Contraveeners, according to their qualities and deserts.

Our Sovereign Lord, with advice foresaid, Declareth, That Three Justices of Peace shall be a full number and Session, to decide in matters occuring betwixt the four Quarter Sessions.

Also Declares, that no Letters of Caption ought to be granted against the saids Justices, for apprehending of Rebels, except they be found subject to do the same, by possessing of such other Offices and places, to the which the obedience and putting to execution of any such charges doth belong.

And because there is sensible prejudice seen and felt through many parts of the Kingdome, by reason of diversity of Measures and Weights used in the same. Therefore Our Sovereign Lord, with advice foresaid, for removing of all abuses, which may ensue in any time to come thereby, Hath found expedient, and by this Decreet and Statute of Parliament, Decerns, Statutes and Ordains, That there shall be but one just Measure and Weight through all the parts of the Kingdom, which shall universally serve all His Highnesse Lieges, by the which they shall sell and buy, and receive, and give out in all times to come; which Measure, His *Majesty* with advice foresaid, finds should be that Measure of *Linthgow*, which is now commonly used and which hath been used most customably through the greatest parts of this Kingdom these many years by-past. And for setting a perfit Order, whereby all the Measures that are now used may be reduced to the conformity of the saids Measures now authorized; and for making of proportion answerable betwixt the lesser Measure and Weights, and the greatest. His *Majesty* with advice foresaid, hath granted full Power and Commission to *Alexander Frazer of Phillorth*, *Sir Gilbert Ramsay of Balmayn*, *William Scot of Ardross*, *John Murray of Touchadam*, *Sir Robert Hepburn of Keith*, *James Creightoun of Saint Leonards*, *Sir Andrew Ramsay*, *Sir Robert Murray*, *Sir Alexander Wedderburn*, *John Bell*, *William Cunningham*, *Andrew Glen*, *Sir William Thomson*, Whom, or any seven of them, His *Majesty*, with advice fore-



said, Ordains to meet and convene together, at such time and place as they shall think expedient, and to consult and advise together, and to appoint and determine upon the most convenient means, how the said Measures and Weights may be reduced to the conformity foresaid; and after they have ripely advised therewith, and given forth their determination thereanent, they shall deliver the same, and whole course of their proceedings, in the said matter to the Commissioners and Justices of Peace, and to the Deans of Gild of the Head Burghs of the Shires, who shall be holden carefully to do their diligence to see the Measure foresaid, now appointed, to have course through all parts, as well Burgh as Landwart. And that there may be one constant conformity in Head Burgh and Land, Our Sovereign Lord, with advice and consent foresaid, Ordains, that the saids Justices of Peace in Landwart, take tryal of the Measures and Weights used in Burgh, and to take a Note from the Magistrates, and Deans of Gild of every Town, of the Weights and Measures, and of the number thereof which the saids Magistrates and Deans of Gild in Burgh, shall be holden to shew, declare and give up to them, to the effect the saids Justices to Landwart, may confer the same with the Standard now authorized; and where they find any disconformity in the same, from the saids Standard, the saids Justices shall inform the Kings *Majesties* Council thereof, that they may take order therewith as appertaineth: For it is expressly provided by these presents, that the saids Magistrates in Burgh, shall not be permitted to have or use moe Measures within ther Towns, then the number to be professed by them, and given up in Writ to the saids Justices to Landwart, as said is: this alwayes being respected, That if the saids Magistrates within Burgh, find any necessity for having any moe Measures then was given up and used by them before, it shall be licenced to them to make moe Measures, they being answerable and conform to the Standard; and making the saids Justices to Landwart foreseen and acquaint therewith, and declaring the number of the Measures, whereof they find the necessity or use.

The saids Justices shall be holden to give command and direction to their Constables, to apprehend any such person, who shall be found contemptuously to have disobeyed the Censures of the Church, they being lawfully required to do the same.

The saids Justices of Peace, as well to Burgh as Land, shall convene and be present at the Quarter Sessions of the Shire where the Burgh and Land lyeth, give their Oath to the Bench at their admission, make their Record, and make payment of the Fines intronnetted with by them as Justices of Peace of that Shire, to their Collector.

They shall appoint a sufficient Collector for uplifting the Fines and Penalties, which they have power to impose upon an Offender, and are to take Caution of him for making due accompt.

They shall have, during the time of Sessions, for every day of their abode (so it do not exceed the number of three dayes at the most at one time) allowed to every one of them, fourty shillings *Scots* money, daily to be paid and uplifted by the Collector of the Fines; but neither Earl, Lord, Bishop, Privy Councillor, or Sessioner, shall have any allowance; and all such Justices as have the benefit of that allowance, and shall be absent from every ordinary Quarter Sessions, or otherwise when he is required lawfully by the *Custos Rotulorum* to any particular Meeting, shall incur the penalty of fourty pounds *Scots* money, not being lawfully excused, and the excuse allowed by the rest of the Justices there assembled.

The Lords of Session shall direct general and summar Charges of Horning and Poynding, at the instance of the Collector appointed in every County for ingathering all Fines and Penalties whatsoever incurred, upon a simple Charge of

fifteen dayes; and no Suspension shall be granted thereof, but upon consignment of the sums contained in the Sentences, and by finding Caution for payment of the Charges at the modification of the saids Lords.

The saids Commissioners, at the end of every Quarter Sessions, shall send to His Majesties Council, a Catalogue of all such persons as they have either committed, or otherwayes put under surety, with a short Abbreviate of the cause thereof; to the effect, that thereupon the Council, as they shall think expedient, may return to them against their next Session, or to the *Custos Rotulorum* in the mean time, their further directions.

The saids Justices shall put in execution, all Acts of Parliament made for punishing all persons whatsoever, who shall Curse or prophanely Swear, or shall be Mockers or Reproachers of Piety, or the exercise thereof; and shall require and levy upon every Offender, the several penalties following, viz. Of a Nobleman twenty pounds: each Barron twenty merks; each Gentleman, Heritor or Burgess, ten merks; each Yeoman forty shillings; each Servant twenty shillings, *Scots* money; each Minister in the fifth part of his years Stipend; without prejudice to other proceedings against any such Minister for the same. And in any of the cases before specified in this Instruction, the saids Justices shall put in execution all such Laws, as for Corporal punishments, have any provisions mentioned in them for such cases: And in case of the inabilities of the parties Delinquents to pay the sum mentioned in this Instruction, the saids Justices shall put in execution such Laws, as for Corporal punishments, have any provision mentioned in them for such cases; and that the Wives Delinquents shall be punished according to the quality of their respective Husbands, and that their Husbands be lyable for the payment of their Wives Fines respectively, in manner above-mentioned, *toties quoties* for each fault: And all others whatsoever, not particularly herein nominate, are to pay in proportion to their respective qualities and degrees. And also, the saids Justices are to put in execution, the Acts of Parliament made for the punishing of all persons that shall be found guilty of the sin of Fornication; and that they levy or cause to be levied, the several pecunial sums therein mentioned, viz. For each Nobleman, for the first fault four hundred pounds; each Barron two hundred pounds; each other Gentleman and Burgess one hundred pounds; every other person of inferiour quality ten pounds, *Scots* money; and that these penalties shall be doubled *toties quoties*, according to the relapses and degrees of the Offence, and quality of the Offenders. And that the said penalties shall be levied, not only of the Man, but also of the Woman, according to her quality, and the degree of her offence, the one without prejudice of the other. All and sundry which penalties so to be levied, Are to be disposed of as followeth; To wit, one half to pious uses in the same Paroch where the Offenders live, or the Offence hath been committed, and the other half to be divided in two equal parts, one part whereof to be given to the Informer and Prosecutor, and out of the other half, to satisfie the Constable, or other persons who shall be employed for bringing the person accused to Justice, and the remainder to be disposed to pious uses, or to satisfie the Constables for their travel and service in other parts of their office; according as the Justices shall think fit.

That the Justices shall put the Acts of Parliament in execution, for the punishing of all persons found guilty of the sin of Drunkenness or excessive Drinking, especially under the names of Healths, or haunting Taverns or Ale-houses after ten of the Clock at night, or at any time of the day, except in time of travel, or for ordinary refreshments. As also against the keepers of the Taverns or Ale-houses, that shall sell the drink unto them: Which penalties in the saids several Acts contained, the saids Justices are to levy, or cause to be levied, upon the saids

Delinquents ; and the saids penalties are to be disposed of by the saids Justices, in like-manner as aforesaid.

The saids Justices shall put in execution, all Acts of Parliament, made against such persons as shall Profane the Lords-day, and require or levy the penalties therein contained : which penalties foressaid, the saids Justices are to dispose of, in like-manner as aforesaid.

And at what time and whensoever one shall accuse another person or persons to be guilty of Treason, Murder or other Felony, Blasphemy, Incest, or any other hainous Crimes : in such cases the said Justice or Justices, shall forthwith cause such person or persons to be apprehended, and after inquiry made in the cause, the saids Justice or Justices, if they find cause, shall commit the Offender to prison, or take sufficient Bail, if the case by the Law be bailable ; and shall take the information of the Party accusing upon oath, and bind him to Prosecute, and shall take the testimony or deposition of the Witnesses likewise upon oath, and bind them to give in evidence, and shall also take the Examination of the Party accused. All which Recognizances, Informations, Depositions and Examinations, the said Justice or Justices, shall certifie to the next Quarter Sessions, Assizes or Criminal Courts respectively, to the end the Justice may proceed against them according to the Law.

And if any Nobleman, Barron or Bailly, or any in their names, having power, shall acclaim the right of jurisdiction to proceed against any Delinquent apprehended by a Constable for any Capital crime : Then, and in that case, any of the Justices shall receive security of the said Party, who required the Defender to be delivered to him, that justice shall be duly ministred, and then shall cause delivery of the said person to be made to him ; and the said Justice of peace, at the next Session, shall certifie the whole matter to the Bench ; to the effect they may enquire, whether justice hath been accordingly ministred, and if any fault be found, to advertise His *Majesties* Council, that order may be taken therewith.

The saids Justices shall twice in the year, at the first of *December* and the first of *June*, take up a list of the Poor in every Paroch within Burgh or Land ; into which number there shall no person be received, who are any way able to gain their own living ; and to the effect these Poor may no longer be necessitate to seek their living, with such hardship and difficulty by scandalous vaging as hitherto they have been in use of, the justics shall appoint two or moe persons of good fame and quality in every Paroch, to be Overseers for the Poor in each Paroch aforesaid, and to authorize the saids Overseers to make due tryal and examination of the condition and number of such Poor, Aged, Sick, Lame and impotent inhabitants of the said Paroch, who (of themselves) have not to maintain them, nor are able to work for their living, as also of all Orphans and other poor Children within the said Paroch, who are left destitute of all help ; and the saids Overseers are to list and inroll all such persons, and to provide them such a convenient House for their dwelling, either a part or together, as they shall judge requisite ; and upon consideration had, what the necessary maintenance will extend to weekly, the saids Overseers are to call for the Collections of the said Paroch, or other Sums appointed for the maintenance of the poor thereof ; and the persons who have the said sums in their hands, are hereby required to deliver the same to the saids Overseers ; and their Receipts under their hands, shall be their sufficient Discharge : which sum so received, the Overseers, are to dispose proportionably to the several poor people aforesaid, according as they shall find their necessities to require, and the saids Overseers are to take due tryal of the good behaviour and carriage of the poor persons, listed and inrolled as aforesaid, that if any of them being so provided, shall go abroad to beg, or otherwayes miscarry themselves, or shall refuse, being

able, to work any manner of work that they are able to perform ; in such cases, the said Overseers are to acquaint the said Justices therewith, who shall appoint such punishments for the first fault, as in their judgements they shall find requisit ; and if any shall continue in such miscarriages, they are to be holden and repute as Vagabonds, and so to be proceeded against according to the Law in that case provided. And to the end that there may be an exact performance of the premisses, the saids Justices are hereby required, to call before them the saids Overseers once in every six months, or oftner if they shall think expedient, to give an account upon Oath of the whole Sums received by them, and to produce the Rolls of the said poor, together with an Account of what money they have received any otherwayes, for the use of the said poor ; and after a due consideration of the charge, together with the Discharge thereof, to approve, allow, or dis-allow the same, as shall be found just, and the said Justices are to take due tryal and examination how the said Overseers have discharged their Trust : and in case of refusal of any of the saids Overseers, nominat and elected as aforesaid, to accept the said office, or having accepted, shall be found negligent therein, or shall refuse or delay to give an account of their intromissions, when required as aforesaid, or to deliver what money shall be found resting in their hands, undisposed of at the end of the year, unto such new Overseers as shall be appointed : in such cases of the offenders shall incur the penalty of twenty pounds *Scots*, to the use of the Poor ; and suffer such further Censure, as the said Justices, at their Quarter Sessions, upon consideration had of their fault, shall see meet to impose.

And further, the saids Justices are hereby impowered and commanded, to call for an account from these who took upon them to exerce that place and office, during the late Usurpation, of all Fines, Penalties and others, raised, exacted or uplifted of any persons, and to ordain them to deliver and make paiement to them, of what hath not been by sufficient order disposed of : and in case of any difference arising thereupon, that the Justices consult His *Majesties* Council, who shall give their orders therein.

#### *Constables.*

OUR Sovereign Lord, with advice of His Estates, Findes and Declares, that the Constables are to be made choise of, by the Commissioners and Justices of Peace, in their Quarter Sessions, throughout the whole Countrey, two at least in every Paroch, or moe, according to their discretion, having consideration of the quality thereof ; In great Towns likewise, not being Cities nor free Burghs, they are to appoint a number of Constables proportionably to the greatnesse thereof ; but in all Burghs Regall, and free Cities, the Constables are to be chosen by the Magistrates of the same ; and they are to endure, and to be changed, from six to six months.

And who shall refuse to accept the Charge, and not to give his Oath for dutifull execution thereof, shall be imprisoned, and fined at the discretion of the Justices of Peace at their next sitting.

Followeth the Oath to be taken by the Constables.

*I Do swear, that I shall faithfully and truly discharge the Office of Constabulary, within the Paroch of, &c. induring the time appointed to me, and shall not for favour, respect, or fear of any man, forbear to do what becometh me in the said Office : and above all things, I shall regard the keeping and preserving, of the Kings Majesties Peace, and shall at every Quarter Session and meeting of Justices, give true and due information of any breach which hath been made of His Majesties Peace, within the bounds of my Commandment ; and shall no way*

*hide, cover, nor conceal the same, nor any of the proofs and evidences which I can give for the clearing and proving thereof: So help me GOD.*

All the Constables, or at least one of every Paroch intrusted with power to answer for the rest within the said Paroch, shall attend at every Quarter Session; their to give information of all such breaches of the Peace, and other misdemeanors as have happened within their bounds, since the preceeding Sessions, and have come to their knowledge; and shall no way hide, cover, nor conceal the same, nor any of the proofs and evidences which they can give for the clearing and proving thereof; and otherways to give the Bench further information in any thing wherein they shall be required, and to receive from the saids Justices at the end of the Session, such order and direction, as they shall enjoin and appoint.

Every Constable, in their respective Paroches, shall apprehend any suspicious persons, who are night walkers, and cannot give a good account of themselves, and carry them to the next Justices of Peace, to find Caution for their good behaviour, or otherwise be Committed to Prison; and the said Constable, or Constables, shall stay and arrest all Vagabonds, sturdy Beggars and Egyptians, and carry them before some Justice of Peace, who shall take order for their committing to Prison, or other punishments, according to the Statutes of Parliament.

Every Constable, in their respective Paroches, shall arrest all idle persons, whom they know to have no means to live upon, and will not betake themselves to any Labour, Trade or Occupation; and shall carry them before some Justices of Peace, who after examination shall either commit them to Prison, or take surety of them for their appearance at the next Quarter Session.

All Constables in their respective Paroches, shall apprehend every person or persons, that shall be guilty and culpable of Slaughter, Murther, Theft or any other culpable crime whatsoever, and shall require his Neighbours to assist for safe conveying of such person or persons, to the next Justice of Peace who shall commit him or them, to take Surety according to the Instructions given to the Justice of Peace in such like cases, And if any person or persons, shall refuse or delay to assist the said Constables, in executing his or their offices, such persons, for refusing or delaying, shall be imprisoned, or otherwise punished by the said Justices at their Sessions.

All Constables shall arrest any person not being in His *Majesties* service, who shall be found wearing of Hagbuts, Guns or Pistols in any sort, and shall carry them before some Justice of Peace, who is either to take security for their appearance the next Quarter Session, or commit them prisoners till they do the same, unlesse they be Licenced from the Council, or some impowered from them to give such Licences.

Upon the appearance of any Fray or Stir betwixt parties, the Constable shall require the assistance of his Neighbours, for sundering of the parties; and if there be any harm done to the Constable, or any of the Assistance, by them who made the Fray, they shall be punished by the Justices at the next Session.

When any person or persons, have made a Fray, and then flee to an house; The Constable or Constables may follow to the house, to open the doors; which if he or she shall refuse, he shall take notice of the Master or Keeper of the house, and require witnesses thereon; and albeit the Delinquent shall flee further, without the bounds of the Constables charge, yet may the Constable follow and apprehend him in a fresh pursute, and crave concurrence of the Countrey for that effect.

The Constables in every Paroch, shall execute all such Precepts and Warrants as they shall from time to time receive from the Justices of the Peace.

And that the saids Constables may have satisfaction for their travels and pains, Our Sovereign Lord, with advice foressaid, Ordains the saids Justices to give up

particular Notes in writ, to the Auditors of His *Majesties* Exchequer, of the Fines in-brought to them, that out thereof, such measure and satisfaction may be appointed and given to the saids Constables; and also to the Clerks of the Peace as may recompence their travels; wherein if it shall be found, that the saids Fines shall not be sufficient, the saids Lords of His Highness Chequer, shall appoint such further satisfaction to them, as in their discretion they shall think their labours and diligence do deserve, and cause them be paid of the same. And notwithstanding of this above-written Act, and all the particulars foresaid, contained in the same, Our Sovereign Lord, with advice and consent of His saids Estates, Statutes Decerns and Declares, That the erection of the saids Commissioners and Justices of Peace, and grant of Jurisdiction and Privileges to them, and the making or approbation of the particular Acts above-written, introduced in their favours, or any thing therein contained, shall not be in any sort derogatory or prejudicial to the Rights, Privileges and Liberties, granted and bestowed by His *Majesty* or His Highness Royal Predecessors of before, to any of His *Majesties* Subjects, of whatsoever estate or quality from the highest to the lowest: But Declares, that the saids Rights, Privileges and Liberties shall remain in their own integrity, safe, intire, unhurt or unprejudged by the Premises, or any thing exprest in the saids Articles and every one of them, and are holden as especially reserved and excepted out of the same.

And least this above-written Reservation, should seem altogether to destroy the power granted to the saids Justices, or should beget controversie betwixt them and any other having right and liberty of Jurisdiction as said is, Our Sovereign Lord, with advice foresaid, for removing of all question, which may arise betwixt them thereanent, Declares, That it shall not be lawfull nor permitted to the saids Justices, to make any Citation of Parties before their Courts, till the expiring of the space of fifteen dayes after the Committing of the Fact for the which the Committer is to be conveyed: At the compleat out-running of the which space, if any having Power and Jurisdiction as said is, hath omitted and neglected to use and exerce the Privilege and Liberty of their Right and Power; it shall then be lawfull to the saids Justices to make Citation, and to Proceed against the Parties, according to the Power and Authority given to them by His Highness, with advice foresaid and conform to the particular Articles above-written in all points, and no otherways.

If any Party complain to a Constable that he is threatned by another, then shall the Constable apprehend the Threatner and carry him with the party Complainer before the next Justice of Peace, and if he refuse to go, then shall he carry him to Prison.

Which all and sundry the premisses, Our Sovereign Lord, with advice and consent foresaid, Ratifies and Approves in all points, in manner as the same propors. And gives unto them the strength and force of Acts and Ordinances of Parliament, and Ordains execution to pass upon the same as effeirs.<sup>266</sup>

<sup>266</sup> This act, which superseded a previous one of 1617 on the same subject, is still regarded as containing the fundamental regulations as to Justices of the Peace and their powers. It was ratified by 1635, ch. 16 generally. So much of the act "as authorizes and empowers any Justices of the Peace or Magistrates of cities and burghs to rate wages or fix prices of work for artificers, labourers, and craftsmen," is repealed by 53d Geo. III., ch. 40. The present act imposes some restrictions which were removed at the Union by the 6th of Queen Anne, ch. 6, and relative commission. As to the present powers and duties of Justices of the Peace, which are increased and altered by many subsequent acts of Parliament, see Ersk., b. i. tit. iv. § 13, *et seq.*; Tait on Justices of the Peace; and Hutchison on Justices of the Peace. Weights and measures are now regulated by 5th and 6th Will. IV. ch. 63.

344. *ACT for ordering the payment of Debts, betwixt Creditor and Debitor.*

OUR SOVERAIGNE LORD, considering how necessary and essential it is to the very being and flourishing of Kingdoms and Nations, that there should be a National confidence among the people themselves, and with those of other Nations with whom they have correspondence and traffick abroad; and that the most effectual and proper way to beget, cement, and maintain the same, is, that Promises, Pactions, Obliegments and Debts be faithfully performed and satisfied, without which there can be no trust, and consequently no society, intercourse and commerce at home, and all Trade and Traffick with other Nations will certainly decay and cease, to the irreparable loss, ruine and discredit of the Nation: Yet, the troubles and difficulties of the time being so great, that it is fit some breathing time and encouragement should be given to the Debtors, for the better inabling them to keep their credit, and to take some effectual course for payment of their Debts. Therefore His Majesty, with advice and consent of the Estates of Parliament, Statutes and Ordains, That for all Sums and Debts contracted before the tearm of Whitsunday, one thousand, six hundred, and fifty eight years, and exceeding one thousand pounds Scots of principal, personal execution shall be forborne by the space of six years, to begin at Whitsunday last by-past, in this instant year, one thousand, six hundred, and sixty one; Providing that the Debtors make payment of one years Annual-rent at Candlemesse next, in the year one thousand, six hundred, and sixty two, and that the residue of the by-gone Annualrents of the saids Sums resting unpaid at Whitsunday next, shall become and be made a principal Sum, and the Debitor shall give security for the same to these who have right to the by-gone Annualrents, when they take the benefit of the foresaid forbearance, in manner after-mentioned; or at any other time that the same shall be demanded; Which Security to be granted for the said by-gone Annualrents, made up in a principal Sum, shall bear obliegment to pay Annual-rent for the same, in manner and from the tearms after specified, *viz.* For a third part thereof, from Whitsunday next, one thousand, six hundred, and sixty two years; and for an other third part, from Martimesse thereafter, in the said year, and for the last third part, from Whitsunday, in the year one thousand, six hundred, and sixty three, during the not payment of the said principal Sum so made up, for which, personal execution is to be forborne, as for the other principal Sums, by the space aforesaid of six years after Whitsunday last. And without prejudice of the Security to be granted in manner foresaid, It is also Declared and Ordained, that the said by-gone Annualrents, are made up, and shall be holden and esteemed principal Sums; And that Annualrents shall be due and payable for the same from the tearms and in manner foresaid, and that execution shall follow at the instance of those who have right to the same, upon and by vertue of their Bonds, Contracts and Rights, and of this present Act and Ordinance, in the same manner as if a new Security were already granted in manner and of the tenour above-written.

And notwithstanding of the Premisses, It is hereby Declared, that the Lords of Session shall have power to grant and passe Suspensions for Sums not exceeding one thousand pounds, upon such reasons as they shall think just.

And where those who have right to by-gone Annualrents are only Liferenters, and have no right to the stock and principal Sum, It is Ordained, that it shall be lawful to them to use execution for the whole by-gone Annualrents due to them, as they might have done before the making of these Presents; and that the saids Lords of Session shall have power to grant and passe Suspensions against the

said Liferenters, in case they shall find just grounds and cause for granting of the same.

It is likeways Provided, that the benefit of the said forbearance, shall only be granted and competent to such Debtors, as shall pay the said years Annualrent, within the time foresaid, and shall betwixt and the first day of November, compear before any of the Lords of Session with the Clerk, and declare before them upon Oath, that their Debts exceeds the value of Four years Rent of their Estate, pertaining to, and possest by them : which Declaration, extracted under the hand of the Clerk of Register, or his Deputes, shall be a sufficient Security against Personal execution : And for which Extract, the Clerk Register and his Deputies shall have for their Fees the sum of thirty three shillings four pennies Scots, and no more. And it is Declared, that all persons, who shall not by themselves, or their Tutors or Curators, appear and declare within the time, and in manner foresaid, shall be excluded from the benefit of the foresaid forbearance, and shall never be reponed or admitted thereafter, upon any pretext whatsoever.

And the benefit of the foresaid Forbearance being granted to the Debtors, or any of their Cautioners, upon the compearance and declaration foresaid, shall only be personal for them and their Heirs and others representing them, and shall not be extended to those who are bound with them, and lyable to the saids Debts, unless they also compear and declare, that their own proper Debts and Cautionry for persons who have taken the benefit of this Act, exceeds the value of Four years Rent of their Estate, and that within the time and in manner foresaid.

And for the more ease of the Debtors, It is Ordained, that in-case within the time of the Forbearance foresaid, the Debtor shall offer to the Creditor a part of his Debt, not being beneath or within the third part of the whole Sums due by them to the Creditor for the time, the Creditor in that case, shall be holden to accept of the said partial payment : and in-case of his refusal, offer being made of a part of the saids Sums, not within the proportion foresaid, in presence of a Nottar and Witnesses, the Debtor, upon consignation of the same in the hands of the Clerk of the Bills ; shall be free of the Annualrent of that part of the said Sum that shall be consigned, in all time coming after the consignation foresaid.

And whereas the legal reversion of Comprisings was formerly limited for seven years, His Majesty, for the reasons and with consent foresaid, is graciously pleased to extend the same to ten years in all time comming ; and Statutes and Ordains, that all Comprisings already deduced, and whereof the legal reversion is not yet expired, or which shall be deduced any time hereafter, shall be redeemable within the space of ten yeares after the date of the same ; and all comprisings deduced since January, one thousand, six hundred, and fifty two years, and whereof the legals are expired, and all comprisings deduced before the said Moneth of January, one thousand, six hundred, and fifty two years, and which were not expired before the said Moneth of January, one thousand, six hundred, and fifty two years, shall be redeemable within the space of three years, after Whitsunday now last by past, notwithstanding the legal reversions of the same be now expired.

And in case the Lands and others comprised, exceed in yearly Rent and value, the Annualrent of the Sums contained in the saids Comprisings, and of the expence disbursed in obtaining Infetments thereupon, and the Debtor shall desire the Creditor to possess the Lands and others comprised, it shall be lawful to the Lords of Session, like-as the saids Lords are hereby impowered and authorized, upon a Supplication to be made to them by the Debtor, and citation of the comprisers, to appoint the Apprisers to possess such of the saids Lands and others, during the legal reversion, as the saids Lords of Session shall think just and reasonable ; the saids Debtors alwayes giving possession to those who have right to



the saids Comprisings, and ratifying their possession already apprehended by them (if any such possession they have) of such of the saids Lands and others, as the saids Lords of the Session shall appoint, not being beneath in yearly Rent and value of the Annualrents above-mentioned; or otherwayes giving to the Creditors (whether they have possession or not) sufficient security, at the sight of the saids Lords, for payment of the saids Annualrents, during the time foresaid; the saids Lords of Session having alwayes power to determine, whether in the cases foresaid the Debitor shall give surety to the Creditor, for his Annualrents, or the Debitor not being able to give surety, the Creditor shall be obliged to take possession of the Debtors Lands. And if the Lords of Session shall appoint, in the case foresaid, the Creditor to be possess for his Annual-rent, then and in that case, the Debitor shall be holden to deliver the Evidents of the saids Lands to the Creditor, or transumps thereof; providing alwayes, that the Creditors right, by vertue of the saids Comprisings, be nowayes prejudged after the expiring of the same; And that the whole Lands and others, both such as shall be possessed by the Debitor, and the remanent of the Lands and others contained in the saids Comprisings, shall pertain to the Creditor irredeemably.

And because oftentimes Creditors, in regard they live at distance, or upon other occasions, are prejudged and preveened by the more timeous diligence of other Creditors, so that before they can know the condition of the common Debitor, his Estate is comprised, and the posterior Comprisers have only right to the Legal reversion, which may, and doth often prove ineffectual to them, not being able to satisfie and redeem the prior Comprisings: (their means and money being in the hands of the common Debitor) Therefore it is Statute and Ordained, that all Comprisings, deduced since the first day of *January*, one thousand, six hundred, and fifty two years, before the first effectual Comprising, or after, but within year and day of the same, shall come in *pari passu* together, as if one Comprising had been deduced and obtained for the whole respective Sums, contained in the foresaid Comprisings. And it is Declared, that such Comprisings as are preferable to all others in respect of the first real Right and Infetment following thereupon, or the first exact diligence for obtaining the same, are and shall be holden the first effectual Comprising, though there be others in date before and anterior to the same; and the foresaid benefit given and introduced hereby, in favours of these whose Comprisings are led within the time, and in manner foresaid, is only granted and competent in the case of Comprisings, led since the first day of *January*, one thousand, six hundred, and fifty two years, and to be led after the date of thir presents, and for personal Debt only, without prejudice alwayes of ground Annuals, Annualrents due upon Infetment, and other real Debts, and *Debita fundi*, and of comprisings therefore of Lands and others affected therewith, which shall be effectual and preferable according to the Laws and Practick of this Kingdom now standing; And it is also provided, that the Creditors having right to the first comprising, except as is above excepted, shall be satisfied by the posterior comprisers, claiming the benefit foresaid, of the whole expence disbursed by them, in deducing and expeding the said first comprising and Infetments thereupon.

And further, for obviating the frequent and fraudulent practice of the appearand Heirs of Debtors, who are in use to acquire the right of expired comprisings, and by vertue thereof, to enjoy and possess their Predecessors Lands and Estate, to the prejudice and defrauding of the posterior comprisings and other Creditors, It is Statute, that in case the appearand Heir of any Debitor, or any other confident person to his behoof, shall at any time hereafter acquire the right of an expired comprising, already deduced, or which shall be led and deduced hereafter, the said

right shall be redeemable from the appearand Heir, or the said confident person their Heirs and Successors within the space of ten years, after the expiring of the said right, by the posterior comprisers, upon payment allanerly of the Sums truly paid and given out, for buying and acquiring the saids rights, at the least so much thereof as shall be resting unsatisfied, for the same, by the intromission of the appearand Heir, or of the said confident person, or their foresaids.

And His Majestie, with consent foresaid, doth Declare, That the benefit foresaid introduced hereby anent Comprisings, shall be extended to Adjudications for Debt; so that the Creditors, at whose instance the same are obtained, and those who have right to redeem the same, shall be in the same case as to the benefite foresaid, as if the said Adjudications for Debts were Comprisings.

And in case a Creditor, against whom the benefit of the foresaid forbearance for six years shall be taken, or who hath led or shall lead a Comprising against the Debitor, shall think fit, and be willing, and desirous to take his Debtors Lands, or other Estate, or any part thereof for security or payment, and in satisfaction of his Debt, then and in either of these cases, the Debitor shall be holden to give Security out of his Lands, and other Estate, or to sell the same to the Creditor, at the sight of the Lords of Session, with such warrandize, and at such rates and prices (if the Creditor be content to buy) as they shall appoint; with certification, that otherwayes the Debitor, refusing or failing, shall lose and forfeit all benefit introduced in favours of the Debtors, by this present Act, as if it had never been made.

And in regard some persons may have taken advantage of the late times and troubles, by taking and acquiring of proper Wodsets of Lands and others, exceeding the Annual-rent of the Sums lent upon the same; and providing nevertheless, by the right of the foresaids Wodsets and expresse provisions therein, or by writ a part, that they should not be lyable to any hazard of the Fruits, Tennents, War, or Troubles; His Majestie, with consent foresaid, Statutes and Ordains, that all such Wodsets, granted since the year one thousand, six hundred, and fourty nine, shall be restricted to the ordinary Annual-rent of the Sums whereupon the same are redeemable; and the saids Wodsetters shall be countable for the *superplus* of the Mails and Duties and other benefit of the same, exceeding the Annual-rent of the saids Sums, and the same shall be imputed and ascribed, in satisfaction of the saids principal Sums *pro tanto*: And in case any such Bargains and Rights shall be made and acquired hereafter, His Majestie, with consent foresaid, Declares the same unlawful and usury, and the contraveeners shall be punished severely as Usurers, conform to the Lawes and Acts of Parliament against Ockerers and Userers.

And as to proper Wodsets, granted since the time foresaid, where the Creditor undergoes the saids hazards, and the same are affected with the ordinar provisions and clauses irritant, in case of not payment of the sums given out and due upon the saids Wodsets, at the tearmes and in manner mentioned in the saids Rights: albeit the saids Wodsets and Provisions be lawful; yet His Majesty, considering and having respect to the difficulties of the times, Statutes and Ordains, with consent foresaid, That the saids Clauses irritant, shall not take away the Heritors right, they alwayes redeeming within the space of five years after Whitsunday last: And in case the Debtors conceive, that they have dis-advantage by the said proper Wodsets, and shall desire to redeem the same, it shall be lawful to them to redeem at any tearm of Whitsunday or Martimesse they please, notwithstanding of any provision to the contrair in the said Wodset-rights, or any other right apart suspending the redemption thereof. Like-as it is Declared, That the clauses of requisition contained in proper Wodsets, granted since the year one thousand,

six hundred, fourty nine years, shall be effectual and no wayes suspended nor prejudged hereby; But prejudice alwayes to the forbearance of personal execution in manner above-written. And where the Creditors and Wodsetters have transacted with their Debtors, and have acquired irredeemable rights, for, and in place of their former Wodsets, It is Ordained and Declared, That when, and at what time soever the saids Wodsets were granted, whether before or since the year one thousand, six hundred, and fifty years, the saids transactions and irredeemable rights acquired by the Creditor for the same, are and shall be valid and effectual, and shall nowayes be prejudged by these presents.

And further His Majesty, with consent foresaid, doth Declare, That in case any Debtors have by Voluntar agreement betwixt them and their Creditors, or any of them, renounced the benefit of any Acts of this nature, concerning Debitor and Creditor, made or to be made, the said agreement shall be of force and effectual, and shall not be prejudged hereby; without prejudice alwayes to the said Debitor of the prorogation foresaid of the Legal reversions of comprisings led and deduced against them, and not as yet expired, notwithstanding of the agreement and renunciation foresaid.

And because, before the year one thousand, six hundred and fifty, when money past at eight or ten *per cent.* divers proper Wodsets were then made and granted, and are yet unredeemed; and since the beginning of January, one thousand, six hundred, and fifty, there be divers persons, who taking advantage of the times, refused to lend their money, unless they got proper Wodsets of Lands and Teinds, at extraordinary advantages, to the heavy prejudice of the Debtors: Therefore, His Majesty, with advice foresaid, Statutes and Ordains, That in time coming, during the not requisition of the Sums whereupon the saids Wodsets are redeemable, and during the not redemption of the same respectively, if the Debtors shall give sufficient Security to the Wodsetter, for payment of his Annualrent, during the not redemption, or not requisition, as said is; In that case, the Creditor-Wodsetter shall be holden to renounce and quyt his possession of the saids Lands and Teinds, in favours of the Debitor and others having right from him; At least if the Wodsetter shall be content to retain the possession of the same; In that case all the free Profits and Rents, which he shall have or uplift out of the saids Lands, shall be restricted to six *per cent.* yearly of free money, and the Wodsetter shall be countable to the Debitor, or others having right from him, for the *superplus*; and that without prejudice of the Wodsetters real Right and Infeftment, ay and while the Lands be redeemed, and the principal Sum whereupon the same is redeemable shall be satisfied. It is alwayes provided, that where any Creditor hath had loss by his possession of the Wodset-lands and others since the date of his Wodset, So that he hath not received as much Free Rents as, *communibus annis*, hath extended to the Annualrent allowed by Law for the time, all charges and burdens being deduced; in that case, it is provided that the Wodsetter shall be first satisfied of what he wants before he quyt his possession of the said Wodset-lands, or be holden to accept Security for his Annualrents: And it is Declared, that in the account of the Wodsetters by-gone loss, there shall be allowed what he hath disbursed upon reparation and building of Tennents houses, Milnes, and for the advantage of the ground; and generally all other expence which the Wodsetter was put to, and what loss he sustained in reference to the saids Wodset-lands, Rights and Securities thereof, any manner of way; and what he hath lost by Quarterings, Cess, waste Land, depauperated Tennents, or by Tennents who were or are not able to pay, unless the ground should be casten waste: And because the Wodsetters probation of his saids loss may be difficile, he not conceiving that there should be necessity for any such count, or that there should be any

alteration made in the right and possession of his proper Wodset, Therefore His Majesty, with advice foresaid, doth allow the Lords of Session to take such reasonable probation as in equity they shall think fit; And if there be any deficiency, to take the Wodsetters Oath in supplement; and where the Wodsetter is in natural possession of the Wodset-lands, by dwelling thereon or labouring the same with his own Plough and Goods, or otherwayes, having the same plenished with his saids Goods, in that case, he shall not be holden to remove from his said possession, but at the ordinary term of removing, and that he be lawfully warned fourty dayes before, and after sufficient Security shall be made to him, in manner above specified, before the said warning.

And His Majesty having granted so much favour, benefit and indulgence to Debtors, as the like cannot be shown to have been granted at any time in this Kingdom, doth Declare, Statute and Ordain, That the Laws and Practick of the Kingdom, concerning Debts and payment thereof, and diligence & execution for the same, and concerning proper Wodsets, where the Creditor-wodsetter hath the hazard of Fruits, Tennents, War and others, shall be observed inviolably, and be of full force, vigor and effect in all time coming, excepting so far as the same is altered, innovat and repealed by this present Act.<sup>267</sup>

## APUD EDINBURGH,

XVIII DIE JUNIO A.D. M,DC,LXIII.

### 3. *ACT anent the discharging of Advocations for sums within two hundred merks.*

OUR SOVERAIGN LORD and Estates of Parliament considering, the manifold prejudices and troubles arising to divers of His Majesties Lieges, in pursuing of maters of smal importance, by the too frequent granting of Advocations from inferiour Judges. Therefore, Our said Sovereign Lord, with advice and consent of the saids Estates, discharges the Lords of Session from giving and granting Letters of Advocation, of any actions intended or to be intended before

<sup>267</sup> This act, so far as it is not temporary, remains in force in many important particulars.

That part of the act which makes the legal of comprisings ten years, was ratified by 1672, ch. 45, as applicable to *general* adjudications, and is still in force.

The act authorizes the Court of Session, during the legal, to restrict the appriزر's possession of his debtor's lands to as much as will pay the interest, on the debtor giving possession, or ratifying it if already taken: and this regulation has been found to apply to general adjudications, Ersk., b. ii. t. xii. § 21; Bankton, b. iii. t. ii. § 72; Wilson, 20th Feb. 1684, M. 231, 2 Sup. 55; Horsburgh, 16th Jan. 1736, Elch., h. t. vi.; but not to special adjudications, Watson, 26th June 1735, Elch., h. t. v. This privilege, however, is only competent to the debtor, not to posterior adjudgers, Stair, b. iii. t. ii. § 40.

In regard to that part of the act which establishes a *pari passu* preference among apprizers, which was afterwards continued as applicable to adjudications, see Ersk., b. ii. t. xii. § 30, *et seq.*, and Bell's Com., vol. i. p. 717, *et seq.*, and authorities there referred to.

That part of the act which relates to the fraud of apparent heirs appears in full force. See Ersk., b. ii. tit. xii. § 34.

In reference to that part of the act which relates to wadsets which had been granted before and after the year 1650, and which part appears temporary, see Ersk., b. ii. t. viii. § 29, and authorities there referred to.

whatsoever inferiour Judicatories, which may competently, by the Lawes of the Kingdom, be decided by the saids inferiour Judges, before whom the said Action is or shall be intended, for sums of money within two hundred Merks; or for any other cause whereunto, by the Laws of the Kingdom, the saids inferiour Judges are expressly appointed Judges.<sup>268</sup>

4. *ACT in favours of Minors, anent the duties of the Lands comprised from them.*

OUR SOVERAIGN LORD considering, the favourable condition of Minors, who are oftentimes destitute of Tutors and Curators; and though they have them, yet in respect of their minority, they are not in capacity or credit to raise sums of money for satisfaction of their Creditors: And it being unreasonable, that their Creditors comprisers of their Estate, should, during the not expiring of the legal reversion, which, according to Law continues during their minority, have more advantage by their Estate then corresponds to the Annual-rent of the true sums owing to them by vertue of their comprisings; Doth, with advice and consent of his Estates of Parliament, Ratifie and approve the Act of Parliament, made in August one thousand, six hundreded, and twenty one, *Cap. 6.* in so far as the same concerns Minors; And Declares, that the true meaning thereof was, and is, that Minors, having right to the Legal reversion, should be no further obliged during their minority of twenty one years of age, but allanerly for the Annual-rent of the sums contained in the comprisings; and that they lose not the right of the *superplus* of the mailles and duties of the Lands, so far as the same exceeds the said Annual-rents, during their said minority.<sup>269</sup>

12. *ACT anent ruinous houses in Royal Burghs.*

OUR SOVERAIGN LORD being informed, that upon the high Streets of several of His Majesties Burghs-Royal, and in the vennels and other passages within the same, there be many houses in the publick view of all people resorting thereto, very ruinous and not inhabited these divers years by-gone, nor likely to be repaired by any, to the great opprobry of the saids Burghs, and common scandal of the Kingdome, as being altogether defective of that policy and good order which is, and ever hath been, so earnestly intended in the many wholsom and laudable Laws already made, by his Majesty and his Royal Progenitors of most worthy memory. And finding the Burroughs very desirous to have these many dangers and inconveniencies prevented and remeeded, which the Inhabitants of these Burghs, and the rest of the Lieges frequenting the same, do continually fear from such ruinous buildings; Doth therefore, with advice of His Estates of Parliament, Ordain the Provost and Bailies of the Burgh where such ruinous houses are, to cause warn and charge all persons, that have or pretends right to the property of such Lands and buildings, or any Annual-rents forth thereof, to cause build and repair, in a decent way, within year and day, such Houses and Buildings as have been waste and not inhabited three years before the date of this present Act, or shall be waste and not inhabited hereafter by the foresaid space of three years, or else to sell the same to others, to be builded within the same space of year and day: And to charge all known persons, personally or at their dwelling places, and by open Proclamation at the paroch-kirk or Mercat-cross of the Burgh; and all others by

<sup>268</sup> This act is extended by 20th Geo. II. ch. 43, which prohibits advocations in actions under the value of L.12 Sterling.

<sup>269</sup> See 1621, ch. 6, which is here ratified and explained, and note thereon. See also Ersk., b. ii. t. xii. § 19.

open Proclamation at the said Mercat-cross and Paroch-kirk. And in case of their absence out of this Realm, at the Cross of *Edinburgh*, and Peer and shoar of *Leith*, upon threescore dayes; with certification to them if they failzie, the said Provost and Bailies shall cause the saids Lands and Tenements to be valued by certain persons, to be chosen and sworn by them for that effect, and sell the same to any person that will buy them, and pay the price of the same to these owners, if they be known; and if they be not known, to consign the prices hereof in the hands of the Provost, one of the Bailies, or Dean of Gild of the said Burgh, to be forthcoming to these who have interest thereto: And if no man will buy them, it shall be lawfull to the said Provost and Bailies, after apprising thereof, as said is, and payment or consignment of the prices of the same, to cast down the said ruinous houses and cause build the same of new. And His Majesty, with advice foresaid, Declares, That it shall not be lawful in time coming, to any maner of person to pursue them nor their successors therefore, nor pretend any right or interest thereto, but that the said right shall be a perfect security to the builders thereof and their successors.<sup>270</sup>

31. *ACT anent Manses and Glebs, and poinding for Ministers Stipends.*

OUR SOVERAIGN LORD, considering the great difficulties which oftentimes the Ministers of the Gospel do meet with, in the due payment of their Rents and Stipends; So that they are sometimes forced to use legal execution by poinding, and in so doing are necessitate to carry the Goods poyned, to be appraised at the Mercat-cross of the head Burgh of the Shire, Stewartry, Bailery or Regality, many miles distant from the place where the Goods are poinded, to the great prejudice of the party and of the Goods also. Therefore, His Majesty, with advice and consent of the Estates of Parliament, Declares, that it shall be sufficient to the Ministers foresaid, in poinding, apprising, destrenzying the Goods of the persons deficient in payment of their Rents and Stipends, to comprize the saids Goods, by honest sworn men, upon the ground of the Lands and place where the Goods are, which shall be as sufficient, as the same were done at the saids Mercat-crosses. And because, notwithstanding of divers Acts of Parliament made of before, divers Ministers are not yet sufficiently provided with Manses and Glebs, and others do not get their Manses free at their entry; Therefore, Our Sovereign Lord, with advice foresaid, Statutes and Ordains, That where competent Manses are not already built, the Heritors of the paroch, at the sight of the Bishop of the Diocess, or such Ministers as he shall appoint, with two or three of the most knowing and discreet men of the paroch, build competent Manses to their Ministers, the expences thereof not exceeding one thousand pounds, and not being beneath five hundred merks: And where competent Manses are already built, Ordains the Heritors of the paroch to relieve the Minister and his Executors of all cost, charges and expences, for repairing of the foresaid Manses; Declaring hereby, that the Manses being once built and repaired, and the building or repairing satisfied and paid by the Heritors in maner foresaid, the saids Manses shall thereafter be upholden by the incumbent Ministers during their possession, and by the Heritors in time of vacancy, out of the readiest of the vacand Stipend. In like-maner Ordains, that every Minister have Fewel, Foggage, Feal and Devots, according to the Act of Parliament, made in *anno*, one thousand, five hundred, and ninety three. As also, that every Minister (except such Ministers of Royal Burroughs, who have not right to Glebs) have Grass for one horse and two kine, over and above their Gleb, to be designed out of Kirk-lands, and with relief according to the former Acts of Parliament standing in force; And if there be no

<sup>270</sup> See 1594, ch. 36, and note thereon.

Kirk-lands lying near the Ministers Manse, out of which the grass for one horse and two kine may be designed, or otherwayes, if the saids Kirk-lands be arable Land, in either of these cases, Ordains the Heritors to pay to the Minister and his Successors yearly, the sum of twenty pounds *Scots*, for the said grass for one horse and two kine, the Heritors always being relieved according to the Law standing, of other Heritors of Kirk-lands in the said Paroch. And because several Kirks have no Glebs as yet designed to them, it is hereby specially provided, that in all designations of Glebs, Incorporat-acres, in Village or Town where the Heritor hath houses and gardens, the same shall not be designed, he always giving other Lands nearest to the Kirk. And His Majesty, with advice foresaid, for special causes and considerations, Declares, that this present Act, as to the Manses, is to have force, as if the same had been made and dated the fourteenth of *March*, one thousand, six hundred, and fourty nine.<sup>271</sup>

34. *COMMISSION for plantation of Kirks and valuation of Teinds.*

THE King's most Excellent Majesty, being desirous to prosecute the work of valuation of Teinds and plantation of Kirks, in reference to His own interest for the annuity, and the universal good of His people, especially for the incouragment of the Ministers of the Gospel; Doth with advice and consent of His Estates of Parliament, Ratifie and Approve the nineteenth Act of the Parliament, holden at *Edinburgh* by His Royal Father of blessed memory, in *anno*, one thousand, six hundred and thirty three, (entituled, Commission for valuation of Teinds,) in the whole heads, clauses and conditions thereof, except in so far as there hath been any alterations made therein, by Acts and Commissions made and granted by His Majesty since the date of the said Act, or granted by any pretended Parliaments since, and which are Ratified, Salvèd or Reserved by this present Parliament; and which alterations are not destructive of, and contrary to, this present Act, or any clause thereof. And sicklike, Ratifies and Approves the sixty one Act of the first Session of this present Parliament, entituled, Commission for plantation of Kirks, &c. in the whole Heads, Articles and Clauses thereof, except in so far as the same may be contrary to this present Act, as said is. And His Majesty, with advice and consent foresaid, gives full power and commission to *James* Archbishop of St. Andrews; *William* Earl of Glencairn, Chancellor; *John* Earl of Rothes, Treasurer; *Alexander* Archbishop of Glasgow; *William* Earl Marshal, Privy-Seal; *Duke* of Hamiltoun; *Marquess* of Montrose; Earl of *Lauderdail*, Secretary; Earl of *Eglinton*; Earl of *Linlithgow*; Earl of *Kelly*; Earl of *Haddington*; Earl of *Annandail*; Earl of *Leiven*; Earl of *Tweddail*; *George* Bishop of Edinburgh; *James* Bishop of Galloway; *George* Bishop of Dunkel; Bishop of Aberdeen; *John* Bishop of Ross; *Robert* Bishop of Dumblane;

Bishop of Orkney; *William* Lord Bellonden, Treasurer-depute; Sir *John Gilmore*, President of the Session; Sir *Archibald Primerose*, Clerke Register; His Majesties Advocat; Sir *John Home* of Renton, Justice Clerk; Sir *James Lockhart* of Lee; Sir *John Scougal* of whitekirk; *Charles Maitland* of Halton; Sir *Thomas Hamiltoun* of Preston; Sir *John Wauchop* of Nidrie; Sir *Robert Fletcher* of Salton; Sir *Henry Wardlaw* of Pitrevey; *William Scot* of Ardross; Sir *Andrew Ramsay*, Provost of Edinburgh; Sir *Robert Murray* there; Sir *Archibald Sydserf*; Sir *Alexander Wedderburn*; Sir *William Thomson*; *John Miln*; *Robert Lenton*, Provost of St. Andrews; Mr *John Paterson*, Provost of Perth; *William Seatoun*, Provost of *Haddingtoun*; or any fifteen of them; whereof three of the Clergy, three of the Nobility, three Officers of State, three

<sup>271</sup> In reference to this act, see Dunlop on Parochial Law, p. 92, *et seq.*, 107, *et seq.*, 119, *et seq.*, and Ersk., b. iii. t. vi. § 23.

Commissioners of Shires, and three of Burghs ; of which number, the Archbishop of *St. Andrews*, or the Chancellor, or the Thesaurer, or the Archbishop of *Glasgow*, or the Privy-Seal, or the Secretary, or the Duke of *Hamilton*, or the Earl of *Haddington*, or any of them, being alwayes one, to meet and convene at *Edinburgh*, the            day of            one thousand, six hundred and sixty years ; and at such other place or places, times and diets as they shall appoint, to value, and cause be valued, whatsoever Teinds, great or small, Parsonage or Vicarage, of whatsoever Lands within this Kingdom, lyable to the payment of Teinds, which are yet un-valued ; Excepting alwayes the Teithes of the Archbishops, Bishops and other beneficed persons, whereof they were in real and actual possession, by leading and collecting the same, in the year, one thousand, six hundred and twenty eight ; And with provision, that they be not prejudged of the Fruits and Rents of their several Benefices, as the same was possest by them, *anno*, one thousand, six hundred and thirty seven, conform to the Submission made by the Bishops to His Majesty in the said year, and Decreet arbitral following thereupon : With power to the saids Commissioners, or *quorum* foresaid, to appoint Sub-commissioners, conform to the former Acts and Commissions for valuation of Teinds, and receive reports from them. And with power to them, where Ministers are not already sufficiently provided, or have not Localities assigned to them for their Stipends, out of the Teinds within the Paroch where they serve the Cure, to modify, settle and appoint constant local Stipends to ilk Minister, out of the Teinds of the Paroch where they serve the Cure, in so far as the same will amount to, according to the quantities of victual or money mentioned in the saids Acts and Commissiones, and to decide and proportion the saids Localities. And with power to dis-joyn too large and spacious Paroches, to cause erect and build new Churches, to dismember and annex Kirks, as they shall think just ; and to take order, that every Heretor and Liferenter shall have the leading and buying of their own Teinds, if they be willing, according to the rates prescribed by former Commissions ; Particularly, by the Commission granted by His Majesty, with consent of the Estates of parliament, in *anno*, one thousand, six hundred and thirty three ; with power to them to determine all questions concerning the prices of Teinds, betwixt Titulars and others having right thereto, and the Heretors ; and to appoint such securities, in favours of the Titulars and others having right to the Teinds, for the prices to be granted by the Heretors, payers of the valued duties, or buyers of the said Teinds, and in favours of the Ministers, as to their maintenance, as the saids Commissioners shall think fitting, according to the rule set down in the saids former Acts, namely in the said Act, *anno*, one thousand, six hundred and thirty three. Declaring, That where the Vicarage of any Paroch is a several Benefice and Title from the Parsonage, the same shall be severally valued ; to the effect, the Titulars or Ministers serving the Cure, having right to the said Vicarage, be not frustrat of the true worth thereof ; And that Titulars, and others having right to Teinds, shall not be forced to dispoone any Teinds, valued or to be valued, which shall be assigned, disposed and allocat to the Minister serving the Cure of the Paroch. As also, with power to the saids Commissioners or *quorum* foresaid, to rectifie whatsoever Valuations, led or to be led to the enorm prejudice of the Titulars, and to the hurt and detriment of the Kirk, and prejudice of the Ministers maintenance and provisions, or of His Majesties Annuity. Provided alwayes, likeas it is hereby expressly provided, that where Valuations are lawfully led, against all parties having interest, and allowed by former Commissiones, the same shall not be drawn in question, nor rectified upon the pretence of enorm lesion, at the instance of the Minister (not being Titular) or at the instance of His Majesties Advocat, in respect of His Majesties Annuity, except it be proven



that collusion was used betwixt the Titulars and Heretors, or betwixt the Proctor-fiscal and Heretors and Titulars; which collusion is declared to be, where the Valuations are led with the diminution of the third of the just Rent, which diminution shall be proven by the parties Oaths. And albeit all the Acts of the pretended Parliaments, in the years, one thousand, six hundred, and forty, one thousand, six hundred, and forty one and thereafter, are declared, by an Act of this Parliament, null and of no avail in all time coming: Yet, it is hereby Declared, That all and whatsoever Valuations, Acts, Sentences and Decreeets, done and past by any Commissions granted by the saids pretended Parliaments, with all executions used or to be used thereupon, are and shall be as valide in all time coming, as if the saids Valuations, Acts, Sentences and Decreeets, had been given and pronounced by persons legally empowered to that effect, any thing in the foresaid rescissory Act to the contrary notwithstanding; Excepting such Decreeets of Valuation, modification of Stipends, or augmentations thereof, past and granted since the year, one thousand, six hundred, and thirty seven, whereby the saids Archbishops or Bishops are prejudged of any part of their Rents, whereof they were in possession in the said year thirty seven. And although, by a special Act of this present Parliament, the pretended Parliament, holden in *anno*, one thousand, six hundred, and forty nine, and in the beginning of the year, one thousand, six hundred and fifty, is, from the beginning, Declared void and null, and all that had followed thereupon; Yet nevertheless, His Majesty doth, with advice foresaid, authorize all Valuations, Acts, Decreeets and Sentences, led, deduced and pronounced by the Commissions, one or moe, appointed by the said pretended Parliament, for plantation of Kirks and Valuation of Teinds, and all execution competent thereupon; Excepting such Decreeets and Sentences, given in favours of Ministers for their Stipends, or for dividing, uniting, annexing or building of Kirks, which shall be found to have been unjustly or exorbitantly decerned: The determination whereof is hereby referred by His Majesty, with consent foresaid, to the saids Commissioners, that they, after hearing of parties and consideration of particulars, may take such course, for altering, annulling, or allowing of the saids Acts, Decreeets and Sentences, as they shall think fitting, conform to the Laws, practick and Custom observed preceeding the year, one thousand, six hundred, and forty nine; And ordains Processes, upon supplications, to be summarily granted, parties alwayes being cited, and that without any reduction. And it shall be lawful to the saids Commissioners, or *quorum* foresaid, to proceed in all Summons and Actions to be intended for that effect, within the space of two years after the first down-sitting of the Commission. And whereas it may fall out, that some of the saids Commissioners may be un-able to attend the service, through death, sickness, or other known impediment; Therefore, His Majesty Declares, that He shall be careful to fill their places with other persons qualified, whose oaths for the faithful discharge of the same shall be taken by the Lord Chancellor, or in his absence, by the President of the said Commission for the time; And Ordains this present Commission to endure ay and while the same be discharged by His Majesty; and the Acts, Decreeets and Sentences thereof, to have the force, strength and effect of a Decreet and Sentence of Parliament, and the Lords of Session to grant and direct Letters of Horning, Poinding and others requisit, in maner contained in the foresaid Commissions. And considering, that it was the will and pleasure of His Majesties Royal Father, that all Heretors, who should be willing to buy, should have their own Teinds, at reasonable rates; Therefore, His Majesty, with advice foresaid, Statutes and Ordains, That all Heretors, whose Teinds are not valued, (excepting as is formerly excepted in this Commission) shall have liberty to value and buy the same, at such rates as is contained in the Acts of Parliament, one thousand,

six hundred and thirty three. With power to the saids Commissioners, to augment the saids rates according to the burden of augmentation, and others sustained by the Titulars since the saids Acts; and the saids Heretors to have the liberty of buying, as said is, within the space of three years after the Valuation. With this Declaration alwayes; That in case the impediment, during the time foresaid, flow from the Titular, by reason of his minority or other in-ability, in that case, the Heretor who offers himself ready to buy his own Teinds, within the space foresaid, shall have place, so soon as the impediment is removed, to buy his Teinds, notwithstanding of the expiring of the years and space above-exprest. And it is Declared, that if the Heretor be Minor, and his Tutors neglect the buying of his Teinds within the foresaid space, the Minor shall have action for two years after his minority, to compel the Titular for selling of his saids Teinds; And His Majesty, with consent foresaid, hereby discharges all former Commissions, Declaring the same to be expired.<sup>272</sup>

52. *ACT concerning Beggars and Vagabonds.*

OUR Sovereign Lord, considering the many laudable Acts of Parliament, made by His Majesties Royal predecessors for relief of the Poor, and for constraining of Beggars, Vagabonds and idle Persons to take themselves to lawful Callings, that they might not be burdensom and dis-graceful to the Kingdom; Especially the 74th Act of the sixth Parliament of His Majesties Royal Grand-father King *James* the sixth of happy memory; Ordaining the names of the poor of ilk Paroch, and such as must be necessarily sustained by almes, to be taken up, and to tax and stent the persons within the Paroch, according to the estimation of their substance, without exception of persons, to such weekly charges and contributions, as should be thought sufficient to sustain the said poor People: And the two hundred and sixty eight Act of the fifteenth Parliament of King *James* the sixth, Ratifying the former Act; With this addition, That strong Beggars with their Bairns, be employed in common Works, and that they shall continue servants therein during their life-times. And considering the tenth Act of the two and twentieth Parliament of His said Royal Grand-father King *James* the sixth, Recommending to all His good Subjects, to take into their service poor and indigent children, declaring that they shall be subject to their said Masters, their Heirs and assignayes, in all kind of service that shall be enjoined to them, untill they pass their age of thirty years compleat, and that they shall be subject to their Masters correction and chastisement in all maner of punishment (life and torture excepted) and that if it shall happen, the said persons to absent themselves from their Masters service without their licence, not only to be lyable to bodily punishment at their Masters discretion, but that all receptors of them shall be obliged to restore them to their Masters, within twenty four hours after they be required, otherwayes, to pay to their said Masters, ten shillings *Scots* for ilk dayes absence till they be restored. And His Majesty considering, that the chiefe cause, whereby the foresaid Acts have proven in-effectual, and that Vagabonds and idle persons do yet so much abound, hath been, that there were few or no common Works then erected in the Kingdom, who might take and employ the said idle persons in their service; and that now, by His Majesties princely care, common Works for Manufacturies of divers sorts, are setting up in this Kingdom; Therefore, His Majesty, with advice and consent of His Estates in parliament, Ratifies and Approves the foresaid Acts of Parliament; with this addition, That it shall be leisum to all persons or Societies, who have or shall set up any Manufacturies within this Kingdom, to seize upon and apprehend the persons of any Vagabonds, who

<sup>272</sup> See note annexed to 1617, ch. 3.

shall be found begging, or who being Masterless and out of service, have not wherewith to maintain themselves by their own means or work, and to imploy them for their service as they shall see fit, the same being done with the advice of the respective Magistrates of the place where they shall be seized upon; And Ordains the Paroches where such Vagabonds or idle persons, as shall be found begging, were born; Or in case the place of their nativity be not known, the Paroches where they have any residence, haunt, or most resort for the space of three years immediately preceeding their being so apprehended, who thereby are relieved of the burden of them, to make payment to the persons or Societies that shall happen to imploy them, two shillings *Scots money per diem*, for the first year after they be apprehended, and one shilling *Scots per diem* for the next three years thereafter; the one half thereof to be payed by the Heretors of the several Paroches *respective*, and the other half thereof to be payed by the possessors and Inhabitants dwelling upon the ground of each Heretour *respective*. Likeas, His Majesty, with advice and consent foresaid, Ordains the Heretors of each Paroch, or as many of them as shall happen to meet, upon publick intimation, made at the Paroch-kirk upon any Sabbath at the dissolving of the Church from the first Sermon, by any of the Heretors of the Paroch, or by the employers of the poor, to make up a stent Roll for maintenance of the Poor in their Paroch, who shall be employed, as said is, at the rate aforesaid, the one half thereof to be payed by the Heretors, either conform to the old extent of their Lands within the Paroch, or conform to the valuation by which they last payed assessment; or otherways, as the major part of the Heretors, so meeting, shall agree, Life-renters and Wodsetters alwayes being lyable, during their Rights as Heretors; and the other half thereof to be laid upon the Tennents and possessors, according to their means and substance. And in case the saids Heretors, being required by any person or Society, employing the poor as said is, shall failzie to make up and deliver a stent Roll in maner foresaid, with power to the persons, Society or others intrusted by them, to charge the Heretors of each Paroch for the sum of two shillings *Scots per diem*, for each one of their poor, whereof they shall be relieved in maner foresaid, conform to the old extent or valuation foresaid, at the option of the person or Society employing, or these intrusted by them; which stent Roll shall continue and stand for one year after the making up thereof, either by the Heretors, or in case of failzie, by the Persons or Societies employing the poor, as said is, and shall then be renewed from year to year, during the years above-written. Providing also, that the Heretours in case they failzie to make a stent Roll, as said is, and be charged conform to the old extent or valuation of their Lands, that they shall have relief of the Tennents and possessors of their Lands, for the one half of what they shall be distressed for. And His Majesty, with consent foresaid, Ordains Letters of Horning to be directed hereupon, at the instance of the Persons or Societies employers of the Poor, or persons intrusted by them, against the Heretors and others for payment of the said daily allowance for the Poor, or against the recepters of them, being so employed, for ten shillings *Scots money per diem*, upon fifteen dayes only: Providing alwayes, that after examination of the case, the Lords of the Privy Council shall find cause for directing such Letters; And ordains all Sheriffs, Stewarts, Bailies of Regality, Principality, Magistrates of Burroughs, or Justices of Peace and their Constables, to be assisting in the apprehending of the saids Vagabonds, or in the bringing of them back to their service, after they shall be employed: And strictly Prohibits and Discharges all persons whatsoever, to oppose or hinder the taking or bringing back of them in maner foresaid *respective*, under the pain of deforcement. Likeas, it is hereby Declared, That the Poor so employed shall continue in the service of the employers, and under their direction and correction, in maner foresaid, not only during the

space of the maintenance to be payed for them by their Paroches, in maner above-written ; but also for the space of seven years thereafter for meat and cloath only ; Declaring alwayes, likeas it is hereby expresly Declared, that the Burgh of *Air* nor their inhabitants shall no wayes be comprehended herein, but are excepted here-from in all points. And recommends to the Lords of the Privy Council, to see this Act and all former Acts of Parliament made against sturdy Beggars and Vagabonds, put to execution, with power to them to supply by their order what shall be deficient, as to the execution of the saids Acts.<sup>273</sup>

66. *ACT for in-bringing of His Majesties Rents.*

FORasmuch, as His Majesty and Estates of Parliament, taking to their consideration, the great contempt and neglect of the severall Fewers and others lyable in payment of His Majesties Rents, where-through (notwithstanding of the diligence and endeavours of His Majesties Thesaurer-principal, Thesaurer-depute, and others His Majesties Officers appointed for the management of His Majesties Revenue) the same are not payed, or otherwise so unseasonably payed, that it proves a great hinderance and prejudice to His Majesties affairs. And finding severall Acts of Parliament made for the timeous and seasonable payment of His Majesties Rents, as well constituting the time and sitting of the Exchequer, to the effect that the persons lyable in payment, might know both the time, place and persons, where, when and to whom they should compt and make payment of the saids Duties, as also such censures and penalties as might induce them to due obedience thereto: particularly, the sixty third Act, *Par.* eleventh, holden by His Majesties Grandfather of blessed memory, in *anno*, one thousand, five hundred and eighty seven, Ordaining the Exchequer to sit down the first day of *July* yearly, and to continue to the last day of *august* thereafter ; requiring not only the Thesaurer, Comptroller, Collector, their Deputes and other Officers, to be present and give their attendance during the said time ; but also all persons lyable in payment, who ought to make compt in Exchequer, to be charged by precepts to compear thereat, under the pain of fourty pounds, to be up lifted by the Thesaurer ; Ordaining Letters of Horning to be directed against them for payment thereof, and that the saids persons do attend for making of the saids accompts to the close thereof : and in case of disobedience to the said Precept, that they be charged of new at the Mercat-cross of *Edinburgh*, and in case of their disobedience to the said Charge, to be denounced Rebels at the said Cross ; which denunciation is declared to be as sufficient, as if the same were at the head Burgh of the Shire where the person liveth, and that the Horning be registrat in the Thesaurers books or Sheriff books of *Edinburgh*. And sicklike, by the sixty fifth Act of the said Parliament, all Chamberlains and other Receivers of His Majesties Rents, as well heretable as moveable, are ordained to find caution to the Thesaurer in *Edinburgh*, for making compt at the ordinar time of Exchequer, and payment within twenty dayes after the terme. And also, by the eighty Act of the said Parliament, it is Ordained, that Letters be directed, charging the Sheriffs, under the pain of rebellion, with certification, &c. to find caution, Burgeses Indwellers in *Edinburgh*, that they shall yearly make their accompts in Exchequer, and pay all things resting owing to the Kings Majesty, by vertue of their office. And sicklike, by the two hundred and thirty Act, Parliament fourteenth, *anno*, one thousand, five hundred, and ninety four ; not only the foresaid Act is

<sup>273</sup> In reference to this act, see Dunlop on Parochial Law, p. 325, *et seq.*

ratified and approven; but also, all Chamberlains, Fewers, Customers, Baillies of Burroughs, and Sheriffs, and others intrumettors with the foresaids Rents, are ordained to find caution Burgesses of *Edinburgh*, for yearly compearing and making compt in Exchequer. And sicklike by another Act, Parliament fifteen, Act two hundred and sixty two, for preventing of the prejudice that did then arise, through the not timeous payment of the foresaids Rents, payable out of the High-lands and Isles, the saids Fewers are Ordained to find caution to the Exchequer, for yearly and thankful payment of the yearly Rents, Duties and Services due and payable forth of the Lands possest and occupied by them, or any other in their names; wherein if they failed, their pretended Infestments, and other Rights and Titles they have to any of their Lands, either property or superiority, are declared forfault and null. Which whole Acts of Parliament *respective* above-mentioned, The King's Majesty and Estates of Parliament, taking of new to their consideration; and finding no means could have been more probable and conduceable, for preventing of these prejudices and obstructions that have arisen to His Majesties Affairs, through the not timely payment of His Rents; and that the neglect of the exact putting of the saids Acts to execution, hath been the only fountain from whence these have sprung. Therefore, and for preventing of the same in the future, the Kings Majesty, with advice and consent of the Estates of Parliament, doth Revive, Renew, Ratifie and Approve the foresaids Acts respectively and particularly above-written of the dates, tenors and contents thereof in all points, in so far as the same are or may be extended to the payment or securing of His Majesties Rents; and Ordains the same to have force, and to be punctually obeyed and extended against all Chamberlains, Fewers, Sheriffs, Stewarts of Stewartries, Bailies of Regalities, Bailies of Burroughs, and others lyable in payment of any of His Majesties Rents, for finding caution in Exchequer to the Thesaurer-principal and Thesaurer-depute, who are hereby required to cause charge the foresaids persons, particularly above-mentioned, at the Mercat-cross of *Edinburgh* to compear before them, to the effect above-written; with certification, not only under the pains contained in the respective Acts of Parliament; but also, in case of their disobedience, to denounce them Rebels at the said Mercat-cross of *Edinburgh*, and to be registrate in the Thesaurers or general Register of Hornings: Which charge, denunciation and registration *respective*, the King's Majesty and Estates of Parliament Declares to be as sufficient to all purposes and intents, as if the same charge were given to them personally at their dwelling-houses, and the denunciation at the head Burgh of the Shire where they live, and the same registrate in the Sheriff Books thereof. And sick-like, His Majesty and Estates of Parliament taking to their consideration, that several of the saids Fewers, charged and denounced for not compearing, compting and paying of their saids Duties, do ly under the Process of Horning, apprehending themselves (from the distance of the place) secure, both as to their persons and goods, to the great contempt of His Majesties Royal Authority, slighting, contemning and vilipending His Majesties Laws: And His Majesty and Estates of Parliament considering, by the nature, duty and office of each Sheriff, Stewart and Bailies of Regalities, within their respective Jurisdictions, they as His Majesties Officers are obliged, and by several Acts of Parliament (*viz.* the 30. Act Ja. 4. Par. 3. Par. 6. Act 69. Act 97. Ja. 5. Par. 7. Act 74. Par. 6. Ja. 6. Act 75. Ja. 6. Par. 6.) Ordained, to execute His Majesties Laws, and put letters of Poinding and Caption to execution, take and apprehend the Rebels, uplift their estates and compt for the same to the Comptroller and Thesaurer, and to cause their Clerks

give in the Registers of Hornings, and to up-lift His Majesties retoured Duties, blench duties, taxations, and other duties payable to His Majesty, as not only the saids Acts of Parliament, but also the several Rolls of Exchequer, bears; Whereby it appears, both by the Law, and the nature, and duty of their Office, that they ought to execute His Majesties Letters, and cause His Majesty be payed of His Rents by the persons lyable in payment thereof within their bounds, and that the contemners of His Majesties Authority be duly punished, and His Majesties Laws put to execution by them as His proper Officers. Therefore, the King's Majesty and Estates of Parliament Ordains, when any of the foresaids persons, for disobedience to the charges given to them for payment of the Mails, Farmes and Duties, as said is, are denounced Rebels and put to the horn, Letters to be directed to charge the Sheriff of the Shire and his Deputes, Stewarts of Stewartry, Baillie of the Regality *respective*, within those bounds where the saids persons dwells or Lands lyes, to take and apprehend their persons and put them in warde, ay and while payment be made to the Thesaurer and Thesaurer-Depute, or others appointed by them, and an *equē* retired thereof, or to poind and destrinzie the readiest goods and geer, and to make sale of so much thereof; and to cause His Majesties Thesaurer and Thesaurer-depute, and others appointed by them for that effect, to be compleatly payed of the said sum charged for, or to instruct sufficient and exact diligence for the same, within twenty one dayes next after they be charged: With certification, if they failzie, the saids twenty one dayes being by-past, Letters shall be directed to charge them or their respective cautioners, to make payment thereof themselves, under the pain of rebellion and putting of them to the horn; and if they failzie, to denounce them rebels, &c. in maner above-specified.<sup>274</sup>

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APUD EDINBURGH,

XIX DIE OCTOBRIS, A.D. M.DCLXIX.

PAR<sup>r</sup>. 2d.

4. *ACT for registration of Instruments of Resignation ad remanentiam.*

OUR SOVERAIGN LORD, with the advice of the Estates of Parliament, Statuts, & Ordains, That all Instruments of Resignation that shall be made in the Superiour hands, *ad remanentiam*, (fourty dayes after the publication hereof) be registrate within threescore dayes after the date thereof, in the same manner and way, and at the same rates as Renunciations, Seisings or Reversions: To the effect, the Lieges may the better know, that the Infestment which was granted to the Resigners is thereby void and extinct, and that they may be put *in mala fide* to contract with the Resigner thereanent, or to comprise the same from him, other-ways the said Resignation to be null. It is alwayes hereby Declared, That the Instruments of Resignation of Tenements, Lands and Fishings holden in free Burgage, being registrate in the Town Court Books of the Burgh, shall not fall within the certification of this present Act.<sup>275</sup>

<sup>274</sup> In reference to this act, see Erskine, b. i. tit. iv. § 6.

<sup>275</sup> In reference to this act, see Erskine, b. ii. tit. vii. § 20.

5. *ACT concerning pointing before the dayes of the Charge expire.*

OUR SOVERAIGN LORD, with advice and consent of the Estates of Parliament, Statutes and Ordains, that hereafter it shall not be lawful to poind moveables upon registrate Bonds, or Decrees for personal Debts, while the Parties be first charged, and the dayes of the Charge be expired: With certification, that pointing otherwayes used shall be null, and the pointers shall be punished and proceeded against as spuiliers; But prejudice alwayes of any Decrees recovered at the instance of Heretors against their Tennents in their own Courts; whereupon it shall be lawful to them to use pointing as formerly; And but prejudice to Superiours to use pointing against their Vassals for their Few-duties, as they might lawfully have done of before.

7. *ACT for the ordering of Suspensions of the Benefices and Stipends of the Clergy.*

THE Kings Majesty being careful that the maintainance of the Clergy be duely secured unto them, and that they be not withdrawn from ther charges by unnecessar Law-sutes, for recovery thereof: Doth therefore, with advice and consent of His Estates of Parliament, Statute and Ordain, that no suspension shall be past in time coming against any Arch-bishop, Bishope, Minister of the Gospel or Universities and Colledges, of any Charges to be given at their instances for payment of the Rents of their Benefices, Stipends or Colledge-rents, where they have special Decrees against the Heretors or possessors due and lyable in payment thereof to them, except upon production of Discharges, or consignment of the sums charged for, if the Rent of the Benefice or Stipend consist in money; or of one hundred merks Scots for ilk Chalder of Victual where the same consists in Victual, and proportionally if the Victual charged for be less then a Chalder, without prejudice to the Lords of Session to modifie a greater or less sum for the Chalder of Victual, as they shall find cause at the discussing of the Suspension. And if any Bill of Suspension of a general Charge shall be presented in time of Session, That the ordinary Lord upon the Bills, before the passing thereof, call for the Chargers at the Bar that they may instruct the ground of the Charge: And in case it shall be found by the Lords of the Session, at the discussing of the suspension, that either the Charge hath been maliciously given or maliciously suspended, That the Lords modifie a fifth part of the sum charged for, of expenses of Plea to be payed by the malicious Charger or Suspender.<sup>276</sup>

14. *ACT concerning Prescriptions.*

OUR Sovereign Lord, with advice & consent of the Estates of Parliament, Statutes and Ordains, That all Arreastments to be used hereafter upon Decrees,

<sup>276</sup> This act is ratified by 1695, ch. 51, and extended by 1696, ch. 14, and is in force to the effect of requiring consignment in all suspensions of charges for ministers' stipends, parish school salaries, and hospital rents. See Juridical Styles, vol. iii. p. 979. See also act of Sederunt to regulate proceedings in the Bill Chamber, 24th December 1838, § 3.

registrate Bonds, Dispositions or Contracts, not pursued and insisted on within five years after the laying on thereof, shall after that time prescribe; And that all Arrestments already used upon the ground aforesaid, shall prescribe within five years after the date hereof. And that all Arrestments, used or to be used upon dependance of Actions, shall likewise prescribe within five years after Sentence is obtained in the saids Actions, if the saids Arrestments be not pursued or insisted on within that time. And likewise, His Majesty, with advice foresaid, Statutes and Ordains, That Ministers Stipends and Multars not pursued for within five years after the same are due. And likewise Mails and Duties of Tennents, not being pursued within five years after the Tennents shall remove from the Lands for which the Mails and Duties are craved, shall prescribe in all time coming: Except the saids Ministers Stipends, Multars, Mails and Duties shall be offered to be proven to be due and resting owing, by the defenders their Oaths; or by a special Writ under their hands, acknowledging what is resting owing; And that all Bargains concerning moveables or sums of money, probable by Witnesses, shall only be probable by Writ or Oath of Party, if the same be not pursued for within five years after the making of the Bargain. And further, His Majesty with advice and consent foresaid, Statutes and Ordains, That all actions proceeding upon warnings, Spuilzies, Ejections, arrestments, or for ministers Stipends and others foresaid, shall prescribe within ten years, except the said actions be wakened every five years: But prejudice alwayes of any of the saids actions, which by former acts of Parliament are appointed to prescribe in a shorter time. And also Statutes and Ordains, That Holograph missive Letters, and Holograph Bonds, and Subscriptions in Compt-books without Witnesses, not being pursued for within twenty years, shall prescribe in all time thereafter; Except the pursuer offer to prove, by the *defenders Oath*, the verity of the saids Holograph Bonds and Letters, and Subscriptions in the Compt-books. It is alwayes hereby Declared, That prescriptions shall not run in any of the Cases foresaid, against minors during the years of their Minority.<sup>377</sup>

#### 15. ACT concerning Interruptions.

OUR SOVERAIGN LORD, with advice and consent of the Estates of parliament, Statutes and Ordains, That all Interruptions, as to the Rights of Lands be citations, shall in time hereafter be execut by Messengers at arms, and against the defenders personally or at their dwelling places and at the Paroch Churches in the time of Divine Service, or immediatly after; And in case the parties be forth of the Kingdom, at the mercatcross of *Edinburgh*, and Peer and Shore of *Leith*, upon threescore dayes. And that all Citations that shall be made use of for Interruptions, whether in real or personal Rights, be renewed every seven years,

<sup>377</sup> This act was ratified by 1685, ch. 14; but is now repealed by 1st and 2d Vict. cap. 114, § 22, so far as it regards the period of prescription of arrestments, which is made by the latter three years instead of five. See Erskine, b. iii. tit. vii. § 20 and 26, and acts referred to.

For an explanation of that part of the act which relates to actions on spuilzies, &c., see 1685, ch. 14, and Erskine, b. iii. tit. vii. § 27 and 28.



otherwayes to prescrive ; Except the parties be Minors : in which case this Act is not to be extended against them ; during the years of their Minority.<sup>278</sup>

37. *ACT for repairing High-wayes and Bridges.*

OUR SOVERAIGN LORD considering how necessar it is for the good of the people, that High-wayes be made and maintained for ready and easie Passage, Travel and Traffick through the Kingdom ; and that the care thereof which hath been laid upon the Justices of Peace, hath yet for the most part proven ineffectual, in regard the saids Justices have not had special Orders and Warrants for that effect. For remeid whereof, his Majesty, with advice and consent of the Estates of Parliament, Doth Appoint and Ordain the Sheriff of the Shire, and one of his Deputes, being alwayes an Heretor therein, and the Justices of Peace in each Shire, to convene at the head Burgh of the Shire upon the first Tuesday of *May* yearly, for ordering of High-wayes, Bridges and Ferries ; with power to them, or major part of them that shall happen to convene, to set down a particular List of the High-wayes, Bridges and Ferries within their bounds, and to divide the Paroches of the saids bounds as they lye most euest to the severall High-wayes to be repaired, and as they may have the most equal burden, and to appoint such of their number or others Overseers of such parts and portions of the saids High-wayes, as are most convenient and nearest to their ordinary residence, and to nominate such of their number as they see fit, to survey and to give an account of the High-wayes, Bridges and Ferries unto the rest ; with power to them to appoint Meetings from time to time, till the said Survey, List and Division of the saids High-wayes be closed : which persons, or any one of them to whom the particular portions of the saids Highways shall be committed, are hereby authorized and strictly required, to call and convene all Tennants and Cottars, and their Servants, within the bounds appointed for their parts of the High-wayes, by publick intimation at the Paroch-Kirks upon the Sabbath day, immediatly after the first Sermon, or any other way that they shall think fit, to have in readiness Horses, Carts, Sleds, Spades, Shovels, Picks, Mattocks, and such other instruments as shall be required, for repairing of the saids High-wayes, and to convene at such places thereof as they shall be required, and in such proportion and with such furniture as the saids Justices or Overseers shall appoint, and that in the most equal and proportionable way, as the saids Justices and Overseers will be answerable. With power to them to designe such of the saids persons as they find to be most skilful, to attend and direct the rest, and to appoint them fit wages for their attendance ; providing that the dayes they are required to work do not exceed the number of six dayes for Man and Horse yearly for the first three years, and four dayes yearly thereafter, and that they be only betwixt the Bear-seed yearly, and Hay-time or Harvest thereafter : With power to the saids Justices or Overseers to poind the readiest Goods of the

<sup>278</sup> The citation of parties who are furth of Scotland is now regulated by 6th Geo. IV. ch. 120, § 51, and A. S. relative to form of Extracts, 24th December 1838, § 7. See Erskine, b. iii. tit. vii. § 43. See also 1685, ch. 15.

If, after citation, the summons, along with the executions, is registered in terms of 1696, ch. 19, and is called in Court in due time, it is effectual against the defender and his singular successors for forty years. See Bell's Pr. § 2007, and Ersk. b. iii. tit. vii. § 44.

absents, for twenty shillings Scots money for the absence of ilk Man daily, and thirty shillings for the Man and Horse, without further solemnity but apprising the same upon the ground of the Land, and therewith to hire others in place of the absents; and in case the saids absents shall have no poindable Goods, to punish them in their persons as they shall see cause. Which High-wayses shall be twenty foot of measure broad at least, or broader, if the same have been so of before, and shall be so repaired, that Horses and Carts may travel Summer and Winter thereupon: and if any part of the saids High-wayses cannot well be continued as now they are, but require to be changed, the saids Justices shall appoint three of their number to visit the places where the High-wayses need to be changed, and to set down Meiths for the new way in place thereof, and upon Oath to estimate the damage of the parties prejudged thereby, and to deliver the same to them in writing under their hands, to the effect the same may be satisfied by the whole Shire, in manner after-specified. Which Justices are Ordained again to convene at the head Burgh of the Shire the first Tuesday of *June* yearly, and thence every Tuesday from fourtnight to fourtnight, at such places as shall be by them appointed during the Moneths of *June* and *July*, for three years next ensuing, for taking account of the said several Justices and Overseers of the respective proportions of High-wayses committed to them, & to fine those Justices and Overseers who shall failzie; still increasing the saids fines till they give obedience and perform their part, and to poind therefore upon the ground of the Lands where their Goods shall be found, without further solemnity. With power also to the saids Justices to visit the Ferries in their Shire, and where the Ferries ly betwixt two Shires, that they correspond with the Justices of the other Shire, to the end they may appoint fit and sufficient Boats, and convenient Landing places; and so to regulate all things concerning the Ferries, as His Majesties Lieges may be readily and conveniently served, and at reasonable rates, and to punish all such as shall neglect or transgress the Rules set down be them for the effect foresaid.

And because the work of the inhabitants within the several bounds, will not be able sufficiently to repair the High-wayses and others foresaid; Therefore, His Majesty, with advice and consent of the said Estates, doth hereby authorize and require the whole Free-holders and Heretors of the several Shires, to convene at the respective head Burghs the said first Tuesday of *June* yearly, and to call for an account from the Justices of Peace of what is needful for reparation of the High-wayses and others foresaid, and what charges and expenses is requisite for promoting thereof; and for making or repairing Bridges and Ferries where they shall be found needful, and accordingly to stent the Heretors of the said Shire, comprehending the Heretors of the Burrough-lands therein, in what shall be found necessary for the effect foresaid, not exceeding ten shillings Scots upon each hundred pound of valued Rent in one year, which is to be uplifted be the saids Justices or whom they shall appoint, be poinding as said is, and imployed for the use foresaid; and of which they shall be obliged to give an account to the saids Heretors at the next Michaelmas head Court yearly. Likeas, His Majesty, with consent foresaid, prohibits and discharges all persons whatsoever to break or abuse the saids High-wayses by plowing up any part thereof, laying stones, rubbish or dung thereon, or any way breaking or pooling the same, or turning in, or damming water thereupon, and Ordains the Conveener of the saids Justices at their meeting the said first Tuesday of *May* yearly, to take an Oath of the remanent Justices and of the Constables, of what damage they know done to the High-wayses, Bridges or Ferries

since the year preceeding, in any of the foresaid particulars prohibited, or any other, and by whom. Upon which the saids Justices shall convey the transgressors, and in case of conviction by Oath or Witnesses, shall fine them as they shall see just, and shall point therefore in manner foresaid, and apply the same for the use of the saids High-ways, with power also to the saids Justices, to call for an accompt of all Destinations and Mortifications to Bridges, Causa's, Ferries or High-ways, and to cause the intrometters therewith, that have not applied the same to these proper ends, to make payment thereof to such persons as they shall appoint, to be employed to the uses for which the same were destinat. Likeas his Majesty Ordains the Conveener of the saids Justices to give a particular accompt under his hand, of what progress is made in the reparation of the saids High-ways, Ferries, and Bridges, upon the third Tuesday of *July* next to come, and so forth yearly to the Lords of his Majesties Privy Council, who are hereby empowered to grant Letters of Horning and Poinding for the effects foresaid, if need be.

And further, His Majesty, with consent foresaid, gives power to the said Lords of his Majesties Privy Council, to Ordain the levying of moderat Customs at Bridges, Causa's or Ferries, for the building, repairing and upholding thereof, in case the said Stent shall not be able to accomplish the same, and to appoint the endurance thereof as they shall see cause. With power also to them, that in case the saids Justices and Heretors failzie in the performance of the things by this Act committed to them, so that the High-ways shall not be sufficiently repaired, nor Bridges and Ferries sufficiently provided for, to take such course for making the same effectual as they shall judge expedient, and to punish the saids Heretors and Justices, as their neglect shall deserve : With power likewise to the saids Lords of privy Council, to appoint and commissionat Overseers for putting the premisses in execution where they shall see cause ; which Overseers so appointed, shall have the same power as is by this present Act committed to the Justices of Peace foresaid. And farther, his Majesty Ordains, that where laboured Land lyes upon the sides of High-ways, that the said laboured Land shall be fenced with Dike and Ditch or Hedge ; yet so as neither Dike, nor Ditch, nor Hedge, nor any part thereof, be within the forementioned breadth appointed for the High-way : And in case any laboured Land so lying shall not be fenced betwixt the first day of *August*, one thousand, six hundred, and seventy one, then and in that case, the saids Justices are hereby authorized and required to cause point in manner foresaid, the Labourers of the said Land, for four shillings *Scots* for each eln which shall not be so fenced after the said time, and to apply the said fines for the fencing thereof in manner foresaid. Likeas, it is hereby Declared, that whatsoever stones, rubbish, dung or other impediments beis thrown or found lying upon the saids High-ways, or water turned in or dammed thereupon, shall be esteemed and held as done by the Labourers of the Land next adjacent to the High-ways where the damage is done, who shall be fined therefore be the said Justices and Overseers ; Reserving right to the saids Labourers to call before the saids Justices any other for their relief, who have been the real actors of the skaith.<sup>279</sup>

<sup>279</sup> This act as well as 1661, ch. 284 ; 1670, ch. 22 ; 1685, ch. 49 ; 1686, ch. 13 ; 5th Geo. I. ch. 30, 11th Geo. III. ch. 53, 12th Geo. III. ch. 45, and 33d Geo. III. ch. 69, are all repealed, so far as they relate to turnpike-roads, by 4th Geo. IV. ch. 49, and 1st and 2d Will. IV. ch. 43.

In other respects, the acts above mentioned, so far as they are not superseded by each other, may be considered still in force.

In reference to these acts, as well as 7th Geo. II. ch. 9, 26th Geo. II. ch. 28, 27th Geo. II.

38. *ACT anent inclosing of Ground.*

WHereas by the fourty one Act of the first Session of His Majesties first Parliament, entituled, *Act for planting and inclosing of Ground*, It is provided, that where Inclosers fall to be upon the borders of any mans Inheritance, the next adjacent Heretor shall be at equal pains and charges in building, ditching, and planting that Dike which divides their Inheritance. And the Estates of Parliament considering the inconveniency and difficulty the execution of that part of the said Act may meet with, in Lands marching together where the Marches are crooked and unequal, or where any part of the bordering Ground is unfit or incapable of bearing a Dike or receiving a Ditch, or hinders the compleating of the Inclosure in ane equal line. For remeid whereof, His Majesty, with advice and consent of the said Estates, doth Statute and Ordain, That whensoever any person intends to inclose by a Dike or Ditch upon the March betwixt his Lands & the Lands belonging to other Heretors contiguous thereunto; it shall be leisom to him to require the next Sheriffs or Bailiffs of Regalities, Stewarts of Stewartries, Justices of Peace or other Judges Ordinar, to visit the Marches alongst which the said Dike or Ditch is to be drawn, who are hereby authorized, when the said Marches are uneven or otherways incapable of Ditch or Dike, to adjudge such parts of the one or the other Heretors Ground, as occasion the inconveniency betwixt them; from the one Heretor in favours of the other, so as may be least to the prejudice of either party, and the Dike or Ditch to be made, to be in all time thereafter the common March betwixt them; and the parts so adjudged *respective* from the one to the other, being estimat to the just avail and compensated *pro tanto*, to decern what remains uncompensated of the price, to the party to whom the same is wanting: And it is hereby Declared, that the parts thus adjudged *hinc inde*, shall remain and abide with the Lands or Tennandries to which they are *respective* adjudged, as parts and pendicles thereof in all time coming.<sup>280</sup>

39. *ACT anent adjudications.*

OUR SOVERAIGN LORD taking to consideration, that by severall Acts of Parliament and constant Practick of the Kingdom, there is one years Rent of all Lands, Annual-rents or others appraised, due and payable to the Superior of the saids Lands and others, before he be holden to enter and infest the Compriser; and that there is the same reason in cases of Adjudications as Apprisings. Therefore his Majesty, with advice and consent of the Estates of Parliament, Statutes, Ordains and Declares, that the Superiors of Lands, Annual-rents and others adjudged, shall not be holden to grant any Charter for Infesting the Adjudger, till such time as he be payed and satisfied of the years Rent of the Lands and others adjudged,

ch. 16, 32d Geo. II. ch. 15, 11th Geo. III. ch. 53, 12th Geo. III. ch. 45, 5th and 6th Will. IV. ch. 62, see Barclay's "Law of the Road," p. 30, *et seq.*; Blair's Treatise on Justices of the Peace, p. 116, *et seq.*; and Burton's Manual, p. 228, *et seq.*

<sup>280</sup> In reference to this act, see Erskine, b. i. tit. iv. § 3; b. ii. tit. vi. § 4; and Cassillis v. Paterson, 28th Feb. 1809, F. C.

in the same manner as in Comprisings; And Declares, that in all cases, Adjudications shall be in the like condition with Comprisings, as to Superiors.<sup>281</sup>

APUD EDINBURGH,

: XXII DIE JULII, A.D. M,DC,LXX.<sup>282</sup>

PAR<sup>t</sup>. 2d. Sess. 2d.

13. *ACT concerning High-ways.*

OUR Sovereign Lord considering, that in the sixteenth Act of the last Session of Parliament, anent High-ways, the time appointed for working thereat is li-

<sup>281</sup> The following act appears in Mr Thomson's edition of the Scots acts, but not in the edition of 1681.

"XCV. RATIFICATION in favours of the Lord Lyon King at Armes, &c.

"OUR SOVERANE LORD with advice and consent of the Estates of Parliament "Ratifies and Approves the fourtie sext Act Parliat. elevent of his Majesties Umq<sup>ll</sup>. dearest "grandfather King James the Sext of ever glorious memorie In the hail heids articles "clauses and circumstances therof and particularly without prejudice of the generality "forsaid that parte of the said Act wherby the Lyon King at Armes is authorised to hold "two peremptor Courts in the yeer Ane upon the sext day of May and the other upon the "sext day of November yeerlie if they be lawfull and failzeing therof the next lawfull "days thereafter And to depryve all Messingers and Officers being fund culpable in the ad- "ministration of their offices As also the cautioner to incurre the pain wherof the third "parte shall apperteane to the Lyon And for the further cleiring of the said Act his Ma- "jestie with advice and consent forsaid Doth Statute and Ordean that the said Lyon King "at Armes shall have full power and jurisdiction to decerne the cautioner alsweil as the "Messenger being fund culpable as said is, conforme to their bands of cautionrie to pay "such sommes of money to the parties leised and wronged as they shall be fund to have "bein damnified in by the male administration of the messenger or officer who shall be fund "culpable as said is As also his Majestie with advice and consent forsaid Ratifies and Ap- "proves the 125 Act tuelff Parliat. of his Majesties said dearest grandfather King James the "Sext and ordaines letters of horning on sex days charge only to be direct upon the saids acts "at the instance of the said Lyon King at Armes and his successors for putting the saids acts "and all the branches therof to further and better execution Together also with the gift "and signature past and exped be his Majesties Umq<sup>ll</sup>. dearest father King Charles the first "of ever glorious memorie To and in favours of the Lyon King at Armes and his breethren "heraulds and pursevants their Clerk of Court and thair successors datat at Halyrude- "hous the twenty seven day of Junii 1633 years with all the priviledges emoluments & "casualties thairin contained and that als fully and ampie in all respects as if the particu- "lar priviledges therin insert wer heirin verbatim expressed and wer granted to the said "Lyon and others therin comprehendit by a particular act bearing originally the saids con- "cessions and priviledges."

This is one of several statutes which regulate the powers of the Lord Lyon. See note annexed to 1587, cap. 30; and Ersk. b. i. tit. iv. § 33.

<sup>282</sup> The following act appears in Mr Thomson's edition of the Scots Acts, but not in the edition of 1681.

"VII. Act concerning Legall Executions to be used at the touns of Lauder and Dunce.

"Our Sovereign Lord with advyce & consent of the Estates of Parliament Statuts & Or- "dains That the Register of Sasins Reversions and other Wreits which be the 16 Act of the

mitted betwixt Seed-time and Harvest, whereas it will be much more convenient working at, and repairing several of the High-ways at other Seasons of the Year: Therefore His Majesty, with advice and consent of the Estates of Parliament, doth declare, that the respective Sheriffs and Justices to whom the Execution of the said Act is committed, may require all persons liable to work and repair the said High-ways, Bridges, and Ferries, to convene, the number of dayes they are liable, at any time or season they shall judge most convenient, Seed-time and Harvest being alwayes excepted. And sicklike, where the Wayes ly at great distance from those who are liable to repair the same, that it shall be leisome to the saids Justices and Over-seers to dispence with those persons who live at such a distance, they paying six shillings yearly for ilk Man, and twelve shillings for ilk Horse which ought to have been employed in the said Work; which sums of money so to be payed in, shall be expended at sight of the said Sheriff and Justices, on Workmen to work in place of those who live at such distances, in manner foresaid.<sup>282</sup>

" 22 Parliamt King James the Sixt ane appointed to be regnat shall be kepted at the burgh  
 " of Lauder for the haill lands lying within the Sherrefdom of Bervick and Bailliarie of  
 " Lauderdale and that the Clerk present and in tyme comeing who shall be Deput and ap-  
 " pointed to keep the said Register shall be resident within the said burgh conforme to the  
 " appointment of the forsaid Act of Parliament And that under the paine of Deprivation of  
 " his said Clerk's place & service and his Majeistie taking to consideration that by Act of Par-  
 " liament bearing date the thrid of Appryle 1661 relative to severall infestments & former  
 " Ratifications The toun of Dunc as lyeing in the medle & most convenient part of the  
 " shire of Bervick is declared to be the place wher the Shirref Courts are to be kept &  
 " held: And the Mercat Crose thereof to be the place wher all denunciations Publications  
 " & other legall executions within the Shyre of Bervick is to be used And withall consi-  
 " dering that the said burgh of Lauder is a Royall Burgh & the only burgh within the  
 " shyre And that the west part of the said shire in some places lyes nearer to Lauder than  
 " Dunc Therefor our Sovereign Lord with advyce and consent of the Estates of Parlia-  
 " ment for the ease of such of the Inhabitants of the Shyre & his Majesties Leidges  
 " whom it concerns & for the good & encouragement of the said burgh of Lauder De-  
 " clars Statuts & Ordains that it shall be arbitrarie to the saids Inhabitants & others  
 " concerned in all time coming to use & exerce all hornings poindings comprysings pub-  
 " lications of Inhibitions & interdictions & all other legall diligences requisite & neces-  
 " sarie as they shall judge fittest for ther conveniencie & that aither at the croces of  
 " Lauder or Dunc in ther option & election which being done at either of the saids Croces  
 " shall be good & sufficient notwithstanding of the forsaid Act of Parliament or any  
 " others limiting & restricting the saids legall diligence to the Crose of Dunc And his  
 " Majeistie with consent forsaid heerby Ratifies the forsaid Act of Parliament in favours  
 " of the toun of Dunc in the haill heads therof except in so far as it is heerby innovat  
 " by the Libertie & choice abovewritten It is always provyded that when any goods horse  
 " nolt sheep cornes or others shall be poinded for debt furth of the burgh of Lauder or Bail-  
 " liarie of Lauderdale That the same shall only be comprysed upon the ground of the Lands  
 " & at the Mercat Crose of the Burgh of Lauder & shall not be caried to Dunc Notwith-  
 " standing of the Arbitriment & Ratification abovespeit otherwayes the saids poindings are  
 " declared to be null Lykas His Majeistie with consent forsaid Statuts Ordains & Appoints  
 " other two fairs to be kept at the said burgh of Lauder more nor are appointed alreadie the  
 " one upon the twentie nynt day of August yearlie to be called St John's day & the other  
 " upon the Sixteen day of November to be called St Margretmess day & that yeerlie in  
 " tymecoming With power to the said Burgh of Lauder to uplift the customs according to  
 " use in ther other Fairs And to have the haill priviledges for the saids two fairs as other  
 " burghs hes."

This Act is repealed by 1696, cap. 16, except as to the registration of Sasines.

<sup>282</sup> The act here referred to is 1669, ch. 37, which see and note annexed thereto.

## APUD EDINBURGH,

XII DIE JUNII, A.D. M,DC,LXXII.

PAR<sup>T</sup>. 2d. SESS. 3d.*2. ACT concerning Pupils and Minors, and their Tutors and Curators.*

OUR SOVERAIGN LORD, Considering the great prejudice and inconvenience befalling to Pupils and others, who cannot provide for, or defend themselves, That their Tutors or Curators have immediate access to their Charter-chests, Writs, Evidents and Securities of their Lands, sums of money, and others belonging to them, which they may imbezle, suppress, or by collusion, give up to their Debtors or other parties interested, without just satisfaction ; Or otherwise, having gotten satisfaction, there is no mean by which a Charge can be made up against the saids Tutors and Curators, but themselves, when they are brought to an account, make both their own Charge and Discharge ; and in case of their decease, they who succeed to them, for the most part, can have no Charge made up against them at all. For remeed whereof, His Majesty, with advice and consent of His Estates of Parliament, Statutes, Ordains and Declares, that no Tutor or Curator of any Pupil, Minor, Idiot or furious person, to be named or designed in any time coming, or who is not actually stated and entered in the said office, shall have power or authority to exercise the said Office of Tutor or Curator, or to meddle with the Writs, Evidents, Means and Estate of the saids Pupils, Minors, Idiots or furious persons, until first an Inventar be made up, in manner after-specified, by the saids Tutors and Curators, with advice and consent of the nearest of kin on the fathers side, and the nearest of kin on the Mothers side, who shall be Majors, and within the Kingdom for the time : Which Inventar shall be subscribed by the saids Tutors and Curators, and the saids nearest of kin ; and one subscribed double thereof kept by the saids Tutors or Curators, another by the nearest of kin on the Fathers side, and the third by the nearest of kin on the Mothers side. All which subscribed Duplicats shall be judicially produced before the Judge ordinar of the place, where the Pupil, Minor, Idiot, or furious person their chief residence is, and an Act made upon production thereof, bearing the production of the Inventar, and expressing the names of the persons subscribers thereof, and in whose custody the same are left ; and that the Duplicats be also subscribed by the Clerk of Court, that they may not be altered thereafter. And in case the nearest of kin on both sides will not concur in making up the Inventar in manner foresaid, the saids Tutors and Curators shall raise summonds at their instance, before the saids Judges ordinar *respective*, for summonding the nearest of kin that are majors, and within the Countrey, upon either side, for decerning them to concur in making up of the said Inventar in manner foresaid : And in case they compear not, or do not concur as said is, With certification, the said Inventar shall be made up by the said Tutor or Curator, with advice and consent of the Judge Ordinar, or any whom he shall delegate or appoint, who shall subscribe three Duplicats of the said Inventar with the saids Tutors or Curators, whereupon a Judicial Act shall be made, and the Duplicats subscribed by the Clerk, in the same manner as if the nearest of kin had concurred ; and a Duplicat thereof shall be kept by the saids Tutors and Curators, and the other two Duplicats shall remain in the Clerks hands, to be delivered to the nearest of kin on the Father and Mothers side, being closed up and

sealed by the saids Tutors or Curators, and the person delegate for making the said Inventar as said is, Which Inventar shall contain the names and designations of the Lands belonging to the Pupils, Minors and others foresaids, and the Bands, Counts and Tickets due to them, and sums therein contained, and their Moveables, aswell Heirship-Moveable as other Moveables: And in case that thereafter any other Lands, Debts, sums of money or other Goods and Gear whatsoever belonging, or that may happen to belong to the saids Pupils, Minors, Idiots, or furious persons, shall come to the knowledge of the saids Tutors or Curators, so that they may attain to the possession thereof; In that case, and within the space of two Moneths after they attain to the possession of the samine, They shall eike the same to the foresaid Inventar, and make a judicial Act thereupon in the hands of the Clerk of Court where the principal Inventar was made, and shall leave two Duplicats of the said Eik or Eiks, one or moe, sealed as said is, in the hands of the said Clerk, for the use of the nearest of kin as said is. And it is hereby further Declared, that the Debtors of the Pupils, Minors, Idiots or furious persons, shall not be obliged to make payment to the Tutors or Curators of the saids persons, of any sums due by them, unless the said Tutor or Curator show to the saids Debtors, that the Sums or Goods demanded from them, are contained in the saids Inventars or Eeks subscribed by the saids nearest of kin, or by the Clerk of Court in maner *respective* foresaid. And it is hereby further Declared, that if the saids Tutors or Curators shall failzie in making up the saids Inventars and Eiks in manner above-written, They shall be lyable both for intromission and Omission, and shall have no allowance or defalcation of the charges and expenses wared out by them in the affairs of the saids Pupils, Minors, Idiots or furious persons: and shall be removable from their Office as suspect Tutors and Curators, if they fail in making up the Eiks from time to time in manner foresaid. It is alwayes hereby Declared, that this Act shall not prejudice Pupils, Minors and other persons aforesaid, to charge their Tutors or Curators with what it can be made appear they have intrometted, or might have intrometted with, over and above what is contained in the Inventar. And further His Majesty, with advice and consent foresaid, Statutes and Ordains, That all Gifts of Tutorry, that shall be granted hereafter, by His Majesty or His Exchoquer, shall proceed upon citation of the Minors nearest of kin on both sides, at the instance of the Cravers of the saids Gifts: That they may be heard, if they have any thing to say against the person to whom the Gift is to be granted; or, upon consent first obtained thereto, under the hands of the said nearest of kin. And Ordains, that the said Gifts shall bear expresly that the nearest of kin were cited, or consented to the passing of the said Gifts: Certifying all who shall procure Gifts of Tutorry or Curatory foresaids, without citation or consent of the saids nearest of kin, or where the samin is not expresly mentioned therein, That these Gifts shall be declared null and void, by way of exception or action, at the instance of any person who shall obtaine a Gift of the saids Tutorry or Curatory, conform to the Tenor of this present Act.<sup>284</sup>

#### 6. *ACT discharging second Summonds, &c.*

And it is further Statute and Ordained, that, in time coming, all Executions of Summonds shall bear expresly the names and designations of the Parties pursuers

<sup>284</sup> In reference to this act, see Ersk. b. i. tit. vii. § 9, and 21, 23.



and Defenders: And that it shall not be sufficient that the same do relate generally to the Summonds, otherwise the Execution shall not be sustained.<sup>285</sup>

16. *ACT concerning Writs passing the Great and Privy Seals.*

THE Kings Majesty, considering how much His own Service and the Interests of His Subjects is prejudged, by the neglect of Registrating these Charters, Infestments, Gifts, Commissions and other Writs, which do pass, and are written to, the Great and Privy Seals; Doth, for remeeding and preventing of this evil for the time to come, with advice of His Estates of Parliament, Statute and Ordain, that all Charters, Infestments, Commissions, Gifts, and other Writs which hereafter shall pass under the Great and Privy Seals, shall be registrat in the Registers of the great and privy Seals, *respective*, before the Seall be appended to them: And the Writers to these Seals, who keep the Registers thereof, are hereby Ordained to Registrat every Writ passing their Office, and, by their Subscription, to mark the same on the back thereof, to be written and Registrat by them, before they give them out to be sealed; and that they make and keep a perfect Minute booke, containing the Names, Surnames and Designations of the persons in whose favours the Charters and other Writs are granted, with the names of the Lands and special matters therein contained: And the keepers of these Seals are hereby Discharged to append the Seals to any writs which are not so marked and attested to be Registrat, as they will be answerable. And his Majesty further considering, that the Writting of Precepts of Seasing, to pass under the Quarter Seal, is a great and unnecessary trouble to His Subjects, and may be aswel, and with less trouble supplied, if the Precept of Seasing were insert in the Charter; Doth therefore, with advice foresaid, Suppress, and for ever Discharge, the passing or writing of any precepts of Seasing to, or under the Quarter Seal: And Ordains, that in lieu thereof, every Charter shall, towards the end, contain a Precept of Seasing of all the Lands and others contained therein; which shall be als sufficient for taking of Seasings, as if the same were past under the Quarter Seal as said is. Likeas, His Majesty, understanding the great trouble and inconveniences occasioned by the Writing of long Charters and other Writs, which pass the Seals aforesaid, in one broad parchment, of so great length and largeness, that they can hardly be read: Doth, for remeid thereof, with advice foresaid, Statute and Ordain, that it shall be free to any person, who hath any Charter or Writ to be written for the Great or Privy Seals, to choice whether to have the same written in a broad skin of parchment as formerly, or to have them written by way of a book in leaves of parchment about the breadth of an ordinary sheet of paper; and accordingly, the Writers to the Great and Privy Seals, are hereby Ordained to write and exped the same: And, if they shall be written in the way of a book, that each page be signed and marked by them as said is. Which being done, the respective Seals are to be appended thereto in manner following, *viz.* To such as shall be written on a skin of parchment in the ordinary way, That the Seals be appended as formerly: And to these which shall be written in the book-way, that the Seals shall be appended

<sup>285</sup> The whole of this statute is now superseded, with the exception of the concluding enactment here published, in reference to which, see *Clason v. Campbell*, 21st December 1837, S. & D. vol. xvi. p. 289, and authorities there referred to.

upon a Tye or Band, which is to go thorow all the leaves in the Margine. And that for doing hereof, this shall be a sufficient warrand to all persons concerned.

17. *ACT concerning Arreastments used within Burghs.*

OUR SOVERAIGN LORD considering, that the Burrows Royal have been in use to arreast Strangers, who live without their respective Burghs, for all Debts due by them to any of the Inhabitants Burgesses of the said Royal Burrows, any maner of way, without distinction; Do daily force them to find Caution to compare before the Town-Courts, or otherwise go to Prison, to the great hurt and prejudice of the Leiges, who being Strangers, and not able to find Caution within Burgh, are oftentimes summarily incarcerat, without any just cause, to their great damage, expences, and disgrace. For remeid whereof, His Majesty, with advice and consent of His Estates of Parliament, Statutes and Ordains, that, in time coming, no Burgesse nor other Inhabitant of any Royal Burgh shall have power, or be permitted, to arreast any of His Majesties Subjects of this Kingdom, who live outwith the Burgh, or force them to find Caution, or imprison them as said is, for any debt whatsoever; Except allanerly for Horse-meat or Mans-meat, Abuilzements or other Merchandice due by Strangers to Burgesses: For which they have no other security but their own Compt-books; and for which the said privileged of Arreastment shall only be competent to the Merchant, Inn-keeper or Stabler *respective* from whom the samin was gotten, and to whom it was originally addebted: So that, in case the samin be assigned to any other Burgess, the Assignee shall not have the benefit of that Priviledge. And siklike, if Strangers have given Band or other security, for the Mans meat, Horse-meat, Abuilzements or other Merchandice, The Merchant, Inn-keeper or Stabler *respective* shall not have the benefit of the foresaid Priviledge; but shall be left to pursue for their respective Debts before the Judge Ordinar as accords. And in regard that Burghs of Regality and Barony do assume the same Priviledge; Therefore His Majesty, with advice foresaid, Inhibits & Discharges the Magistrates of these Burghs to Arreast or Incarcerat any persons who are not Burgesses Inhabitants in their Burgh, for any maner of Debt: And it is hereby Declared, That, if any Magistrate of any Burgh shall presume to do in the contrair hereof. They shall be punished for wrongous Imprisonment of his Majesties Leiges.<sup>286</sup>

24. *ACT for the Ann due to the Executors of Bishops and Ministers.*

THE Kings Majesty, judging it necessary, for the good of the Church, that such a stated and equal course be taken for clearing and securing the Ann due to the Executors of deceast Bishops, Beneficed persons and Stipendary Ministers, as may be suitable to the Interest of the Executors, and no discouragement or hinderance to the planting of the Vacant Benefices: Doth therefore, with advice and consent of His Estates of Parliament, Statute and Ordain, that, in all such cases hereafter, the Ann shall be an half years Rent of the Benefice or Stipend over and above what is due to the Defunct for his Incumbency; which is now settled to be thus, *viz.* If the Incumbent survive *Whitsunday*, there shall belong to them for their Incumbency, the half of that years Stipend or Benefice, and for the Ann the

<sup>286</sup> In reference to this act, see Erakino, b. i. tit. ii. § 22, and Scot, 7th December 1744, M. 1929.

other half: And if the Incumbent survive *Michaelmass*, he shall have right to that whole Years Rent for his Incumbency; and for his Ann, shall have the half years Rent of the following year. And that the Executors shall have right hereto, without necessity or expences of a Confirmation.<sup>287</sup>

### 39. *Commission for Plantation of Kirks, and Valuation of Teinds.*

FORasmuch as His Majesties Father, of ever blessed Memory, out of His Royal Care and Zeal for the Reformed Religion within this Kingdom, and the maintenance and provision of the Ministry and Churches thereof, and the Peace of the Kingdom, and for preventing, and settling all Questions and Differences that did, or might arise betwixt Titulars and others having right to Teinds, and Heretors, concerning the leading and drawing of their Teinds; Did, immediatly after His attaining and succeeding to the Crown, Give forth and emit His Royal Declaration anent the premisses, and the other particulars therein mentioned. And in pursuance of the ends foresaids, divers Laws and Acts of Parliament were made in the year of our Lord, 1633. His said Majesty being present in His Royal Person; and since, diverse Acts of Parliament and Commissions have been, from time to time, Made, Given and Renewed to that purpose: And yet, by reason of the unhappy Troubles and Distractions of the late Times, that good and necessary Work neither is, nor could be throughly and fully accomplished. And, His Majesty being resolved, and desirous to prosecute so good a Work, for the universal Good of His Subjects, and specially for the encouragement of the Ministers of the Gospel: Therefor His Majesty, with advice and consent foresaid, Gives full power and Commission to his Majesties Officers of Estate for the time being; And to the Arch-Bishop of *St. Andrews*, the Arch-Bishop of *Glasgow*, the Bishop of *Edinburgh*, the Bishop of *Dunkeldin*, the Bishop of *Galloway*, the Bishop of the *Isles*, the Bishop of *Brechin*, the Bishop of *Dumblaine*, and the Bishop of *Aberdene*, for the Clergy; The Duke of *Hamilton*, the Earl of *Argyl*, the Earl of *Athol*, the Earl of *Linlithgow*, the Earl of *Queensberry*, the Earl of *Tweeddale*, the Earl of *Kincardin*, the Earl of *Dundonnald*, and the Lord *Elphinstoun*, for the Nobility; The President of the Session, the Lord *Colingtoun*, the Lord *Gosford*, the Lord *Craigie*, the Laird *Niddrie*, the Laird of *Nickolson*, the Laird of *Balcaskie*, Sir *Charles Erskin of Cambo*, and Sir *William Lockhart*, for the Barons; Sir *Andrew Ramsay*, Sir *William Thomson*, Sir *William Sharp*, Sir *Alexander Bruce*, *John Murray*, Tutor of *Stormonth*, *Robert Milne*, *Thomas Calderwood*, *William Binning*, and *John Johnstoun of Poltoun*, for the Burgesses; Or any eleven of them, whereof two of the Clergy, two of the Nobility, two Officers of Estate, and two Commissioners of Shires, and two of Burghs; of which number, the Arch-Bishop of *St. Andrews*, or the Lord Chancellor, or one of the Commissioners of the Thesaurary, or the Arch-Bishop of *Glasgow*, or the Lord Privy Seal, or the Lord Secretary, or the Duke of *Hamilton*, or the Earl of *Tweeddale*, being alwayes one, To meet and convene at *Edinburgh*, the day of \_\_\_\_\_ Years; And at such other place or places, times or diets as They shall appoint, To Value, and cause be valued, whatsoever Teinds great or small, Parsonage or Vicarage, within this Kingdom, which are yet unvalued:

<sup>287</sup> In reference to the subject of this act, see 50th Geo. III. ch. 84, § 16, and Erskine, b. ii. tit. x. § 65, *et seq.*

Declaring, that where the Vicarage of any Parish is a several Benefice and Title from the Parsonage, the same shall be severally valued, to the effect the Titulars, or Ministers serving the Cure, having right to the said Vicarage, be not frustrated of the true worth thereof. With power to the saids Commissioners, or *Quorum* foresaid, to appoint Committees, or Sub-committees of their own number, and to grant Sub-commissions, and to receive reports from them, and to approve or disapprove the same, as they shall find just; and to rectifie whatsoever Valuations led or to be led, to the enorm prejudice of the Titulars, or the hurt and detriment of the Kirk, and prejudice of the Ministers maintenance and provisions. Provided alwayes, Likeas it is hereby expressly provided, that, where Valuations are lawfully led against all parties having interest, and allowed by former Commissions; The same shall not be drawn in question, nor rectified, upon pretence of enorm lesion, at the instance of the Minister (not being Titular) or at the instance of His Majesties Advocat, in respect of His Majesties Annuity; Except it can be proven, that collusion was used betwixt the Titulars and Heretors, or betwixt the Procurator Fiscal and Heritors and Titulars: Which collusion is declared to be, when the Valuations are led with the diminution of the third part of the just Rent: which diminution shall be proven by the parties oath: And with power to the saids Commissioners, or *Quorum* foresaid, where Ministers are not already sufficiently provided, or have not Localities assigned to them for their Stipends, out of the Teinds within the Parish where they serve the Cure, in so far as the samin will amount to, according to the quantities, proportions and rules contained in the nineteenth Act of the Parliament in *Anno*, 1633. To modifie, settle and appoint constant locall Stipends to ilk Minister, out of the Teinds of the Parish where they serve the Cure. With power also, to grant recompence, by prorogation of Tacks to parties, for the augmentation of Stipends, which shall be imposed suitable to the said augmentation, as the said Commissioners shall think just. And sicklike, with power to disjoin too large and spacious Parishes, to cause erect and build new Churches, to dismember and annex Kirks, as they shall think convenient. And to take order, that every Heritor and Life-renter shall have the leading and buying of their own Teinds, if they be willing, according to the rules prescribed by the nineteenth Act and Commission granted by his Majesty, with consent of the Estates of Parliament in *Anno*, 1633. and the Acts of Parliament therein mentioned. With power to determine all Questions concerning the prices of Teinds betwixt Titulars and others having right thereto; and the Heritors: and to appoiat such securities, in favours of the Titulars and others having right to the Teinds, for the prices to be granted be the Heritors or others lyable in payment of the valued Duties, or Buyers of the saids Teinds; and in favours of the Ministers, as to their maintenance, as the saids Commissioners shall think fitting, according to the Rules set down in the said Act in *Anno*, 1633. And the Heritors to have liberty to buy the Teinds of their Lands which are not valued, within the space of three years after the date of this Act: With this Declaration alwayes, that, in case the impediment, during the time foresaid, flow from the Titular, by reason of his minority or other inability; in that case the Heritor, who offered to buy his own Teind within the space foresaid, shall have place, so soon as the impediment is removed, to buy his Teinds, notwithstanding of the expyryng of the years and space above-exprest. And it is Declared, that, if the Heritor be Minor, and his Tutors neglect the buying of his Teinds within the foresaid space; The Minor shall have action



and finding the same to be of such importance, as required a longer time to make a full settlement therein; Yet, in the moneth of *March*, 1670. they agreed unto, condescended upon, and did return to His Majesty, certain Rules and Articles of Regulation, without prejudice of what, upon further consideration, they should thereafter offer for a full settlement. And His Majesty having considered these Rules and Articles, did, by His Royal Allowance of the fourth of *June* 1670. Ratifie and Approve the same, and did Ordain them to be dñly observed in all time coming. And the Commissioners having since that time, kept several Meetings, and taken that Affair into their funder consideration, have resolved upon some other Articles, Rules and Amendments; which being joyned with the former, and again offered to His Majesties consideration, His Majesty doth, with Advice and Consent of His Estates of Parliament, Ratifie and Approve the same, and Ordains them to be recorded in the Books of Parliament, and duly observed by all His Majesties Subjects. Of the which Articles, the Tenor follows.

*Concerning the SESSION.*

1. SEeing a great part of the trouble and expences of the Lieges, in obtaining of Justice in their Causes, is occasioned through the uncertainty of their attendance upon Processes depending before the Lords of Session; whereby not knowing any certain time, at or about which their Processes will be called, they are necessitat to wait on the most part of the time of the Session, during the dependence of their Processes, or otherwayes to be absent when the same are discussed. That therefore, all Processes shall be discussed and determined as the Parties are in readiness, and do call for Justice after the same have been seen by the Defenders Advocats, and are returned by them; And that according to the date of the Returns which are set down, and signed by the Defenders Advocats upon the Process itself, that no Parties be preferred in obtaining Justice to any other who was ready, and calling for it before. And that Books of Enrollment be made for enrolling the said Processes, according to the dates of the Returns, that thereby notice may be timelyously given to all Parties having Interest in the Process, how far the Lords of Session are advanced, in discussing and determining Pocesses according to the saids Rolls, that the Parties may be present when their Processes will fall in to be discussed and determined, in their course as they stand in the Rolls; and may in the mean time rest quiet and secure, that their Rights and Interests will not be decided when they cannot know to be present, which cannot be attained, unlesse all priviledges whereby any Cause can be called, otherwise then according to its due course in the saids Rolls, be laid aside; Excepting only the Causes belonging properly to the Kings Majesty (and not to Donators or others) which may be called at any time when His Majesties Advocat pleaseth, upon either of the two next *Sederunt*-dayes after the Processe is returned; or if the same be not called on either of the saids two dayes, at any time thereafter, upon fifteen dayes advertisement to the Defenders Advocats, that they may acquaint their Clients to be present.

2. That the Books of Enrollment for the Outer-house be kept and made up by the person appointed, or to be appointed by the Lords of Session, who shall attend at the Session-house each Saturday in Session-time, from two a clock in the afternoon, till four, and shall take up a Note of all Processes shown to him, containing the names and designations of the Pursuers and Defenders, and the name of the Cause, whether it be Advocation, Suspension, Declarator, Reduction, or any other

having a special name ; or otherwise under the name of Lybelled Summonds, and contain the date of the return, signed by the Defenders Advocats upon the Process ; and by the said Note, shall insert in the Books all that is produced that day, in manner following, viz. in one Book Suspensions, Advocations, Removings, Ejections and Recent-spuilzies : And in the other Book, all other Causes, according to the dates of the Returns, expressing in the Books, the day of the moneth of the uptaking, before the Causes taken up that day, and also expressing the day of the moneth of the return, before the Causes returned each day, and shall interline nor insert no Cause in the said Books, but set them down in order as they were presented, according to the date of their returns ; and shall receive for inserting of the saids Causes in the Books, and for affixing Rolls upon the Wall conform to the said Books, for every Process four shillings Scots, and no more, although the said Process should continue to be Enrolled several weeks, untill the Ordinary have called and heard the same ; which Books of Enrollment shall alwayes remain in the Session-house, and be patent to the Lieges, that thence Advertisements may be given to all parties having interest ; and for shewing whereof, the Keeper of the Books shall exact or take no money or gratification.

3. That the Keeper of the Books of Enrollment for the Outer-house, take out of these Books, and affix each Monday upon the ordinary place of the Wall of the Outer-house, two Rolls, one containing Suspensions, Advocations, Removings, Ejections and Recent-spuilzies, to be called upon Tuesday and Wednesday ; And the other Roll containing the Causes insert in the other Book of Enrollment, to be called upon the rest of the dayes of the week ; which Rolls are to be taken up in all things conform to the said Books of Enrollment, expressing the day of uptaking ; and that the day of the moneth of the several Returns, be set before the Processes insert each day, and each subsequent weeks Roll shall, in the first place, contain what remained undiscussed by an Act, Decreet, or Protestation, or not delete by the Ordinary, upon the Pursuers not insisting. And where Processes are delayed to a day, till the Parties see, or something be produced or done, which requires not an extracted Act, the same shall remain in all subsequent Rolls, in the same day that it was in the first Roll, that after the day to which it was delayed, it may be called by the Ordinary till it be discussed or delete : And for that effect, the Ordinary shall on the Margine of the Roll, mark at that Process, to what day it is delayed ; which shall remain so marked in the subsequent Rolls, till the Cause be discussed. And in case the Ordinary shall discuss the Roll of the Causes above-exprest, appointed to be called upon Tuesday and Wednesday before these two dayes expire ; he is to proceed to the discussing of the Causes in the other Roll.

4. That the Keeper of the said Books of Enrollment for the Outer-house, do exactly and punctually observe the Rules and Orders aforesaid, and that the person who shall hereafter be appointed Keeper of the saids Books, give his oath for that effect, (the present Keeper of these Books having already made faith to that purpose) and if he transgress the saids Rules, the Lords shall deprive him of his Office, and otherwayes punish him as they see cause, and appoint another in his place, who, and his Successors, shall alwayes be lyable for observing the premisses.

5. That in like manner there be a Book of Enrollment of Processes to be discuss'd in the Inner-house, containing Causes proper for the Inner-house ; as the discussing of reasons of Reduction of Heretable Rights of Lands, or Annual-rents,

Declarators of Rights thereof, Probations of Tenors of Writs destroyed or lost, *Cessiones bonorum*, which Book shall be kept by a person appointed, or to be appointed by the Lord Chancellor, who shall insert the saids Processes as they are in readiness to be discussed in the Inner-house, *viz.* Reductions after the Production is closed, and Declarators, Tenors and *Cessiones bonorum*, after the Dilators are discussed in the Outer-house, and a great *avizandum* made by the Ordinary in the Outer-house, who is to proceed no further therein; and that according to the date of that great *avizandum*, as it stands written upon the Process by the Clerk of the Process: And where the Lords, upon report of Dispute from the Outer-house made by the Ordinary, shall for the importance, intricacy, or preparative of the points reported, ordain the cause to be heard in presence of the whole Lords, the said Process shall be insert in the Roll of the Inner-house, according to the date of the Lords deliverance, appointing it to be heard in their presence.

6. That there a Book of Enrolment of concluded Causes, whereof the probation is to be advised by the Lords, to be insert according to the date of the conclusion of the Cause, as the same shall be presented by the Clerks of the Process, to be kept by the Keeper of the said Book of Enrolment for the Inner-house.

7. That the Keeper of the saids Books of Enrolment for the Inner-house, shall attend in the Session-house each Saturday from two to three a clock in the afternoon, and shall receive and insert all Processes which shall be offered to him in either of the saids Books, according to the order foresaid; and shall receive thirty shillings Scots for each Process to be insert in the Book of Causes to be discussed, and twelve shillings for each Cause to be insert in the Book of concluded Causes and shall exact or take no more for himself or his servants; and shall make the saids Books patent to all the Lieges freely, and shall affix a Roll both of Processes to be discussed in the Inner-house, and of concluded Causes, in all things conform to the Books, upon Monday, als oft as need beis; and shall add to the Causes in the said Roll for subsequent weeks, in the same manner as is appointed for the Rolls of the Outer-house, and both in the Books and Rolls shall express the day of up-taking the Process, and the day of the great *avizandum* or Ordinance of the Lords for hearing the Cause in their presence, subjoyning thereto the Causes each day, both in the Books and Rolls of Causes to be discussed, and the like for the Book and Roll of concluded Causes; according to the date of the conclusion of the Cause.

8. That the Keeper of the saids Books of Enrolment for the Inner-house observe the premisses punctually, under the pain of deprivation, and being further censured by the Lords, as they shall see cause: And that his Successors shall make faith to observe the premisses in all points; the present Keeper of these Books having already given his oath to that effect.

9. That the Lords both in the Inner-house and Outer-house shall proceed to the discussing of Processes, in order as they stand in the said Rolls *respective*, without passing over, or anticipating any Cause: and that each Process shall be still called in its order, untill it be brought to an Act, Protestation, or Decreet; and if it be delayed till something be produced or done which requires not an Act extracted, that after the day to which it is delayed, the same shall be call'd till it be discussed.

10. And where at the calling of any Cause in the Inner or Outer-house, the Pursuer insists not, the Process shall be delete out of the Roll, and Protestation



shall be granted to the Defender, without any other solemnity, but the demanding thereof at the calling of the Cause, whereby the Defender shall not be obliged to answer untill he be summoned of new, and the Protestation money paid, that he be not obliged to an uncertain attendance at the Pursuers pleasure. And in case at the calling of any Process in the Outer-house, any Parties Advocat be in the Inner-house, the Ordinary shall call the Cause the next day thereafter, if he be desired upon a Ticket to be given to him before he go to the Bench ; but that no Advocat make interruption by calling otherwayes over the Bar.

11. That the Lords by no importunity alter the order of the saids Rolls by any Deliverance or Warrant, except it be for discussing reasons of Reduction of small difficulty and importance in the Outer-house, before they be Enrolled in the Inner-house, which shall be Enrolled in the Roll of the Outer-house, according as they shall be presented to the Keeper of the Roll, in the same manner as other Processes.

12. That if any Cause be called by anticipation, out of its due place, the Pursuers Advocat may refuse to insist, or the Defenders Advocat to answer, and it shall be a sufficient defence that he is not obliged to answer before its due course in the Roll : And although neither parties Advocat should object, seeing others who were anterior in the Roll are prejudged, the Clerks are prohibit to write on any such Process called out of its own course, or to extract any Act or Decreet thereupon.

13. That the Lords of Session every Session, go near the discussing of all Causes enrolled that Session : and that as they see their work by the Books of Enrollment, they meet the sooner in the morning, and also meet in the afternoon for taking in Reports from the Outer-house, which requires not the attendance of Advocats, and which consumes much of the time both in the Inner and Outer-house in the forenoon ; and also for advising of concluded Causes, which of all other should be least delayed.

14. That if any Act, Decreet or Protestation be stopped, either by the Ordinary or by the whole Lords, the same shall be called and heard upon the Bench in the Outer-house, by the Ordinary who formerly heard the Cause, either the next day, or upon Tuesday in the ensuing week, or any other morning thereafter, before the Ordinary in the Outer-house come out ; and that he proceed in the Processes until the same be discussed, delete, or Protestation granted in manner foresaid, and that the same shall not be again brought into the Roll.

15. That no Bill be presented to the Lords for stopping or rectifying any Act or Decreet past in the Outer-house, until the party first make application to the Ordinary who heard and pronounced the same ; and if he refuse to hear the Party upon any new matter condescended on, or in case of doubtfulness, to report at least upon consignment of an Amand : In that case, the Party may give in a Bill to the Lords, expressing his application to the Ordinar, and his refusal to hear or report, as said is, and expressing the special matter which he desireth in the Process, and no otherwayes.

16. To the effect, the Lords of Session may be in better capacity to discuss the Processes which come before them, not being overburdened with small and inconsiderable causes, That all Causes, not exceeding the value of two hundred Merks Scots, be in the first instance carried on before the inferiour Judges ; And that no summons be raised upon Bill, for Causes of less importance, for which the Clerk of

the Bills and Writers to the Signet are to be answerable at their peril ; except there be such reasons condescended on in the Bill, as would be sufficient to procure an Advocatioun of the Cause from the inferior Judge, in behalf of a Defender, and competent Instructions thereof ; And that such Bills do not pass of course, but be specially presented and read to the Ordinary, and that the deliverance on the back thereof bear, *Because the Lords have found sufficient ground, for which the Cause ought not in the first instance to be pursued before the inferior Iudge Ordinar, but before the Lords* : Excepting also, the Causes belonging to the Members of the Colledge of Justice, and except Sums due to Merchants, Cooks, Vintners and others in Burgh ; for Furniture taken off from them, by such as dwell not within the Shire where the Furniture was taken off.

17. That where Causes are begun before inferior Courts, no Advocations thereof shall be past, being of no greater importance than as aforesaid, otherways then is provided by the Act of Parliament ; And that the Clerk of the Bills be answerable therefore, not to present, pass or write on any such Bill at his peril.

18. That where Decrets are past before inferior Courts, and craved to be suspended ; if the reasons proceed not on iniquity, but upon alledgeance, that the Decreet was in absence, so that the craver of the Suspension hath never appeared, or hath not continued to defend while there was no in-justice done : Then and in that case, he shall be obliged at the passing of the Bill of Suspension, to consign in the hands of the Clerk of the Bills, such sums for the expences of the party, as the passer of the bill shall appoint, according to the importance of the Cause and the distance of the party, which shall be given up to the Charger, if the Suspender hath not compeared, or continued to defend before the inferior Court, as said is ; and that immediatly at the calling of the Cause to be discussed, when the compearance in the Decreet may appear, unless the Suspender improve the Executions of the Summons whereupon the Decreet did proceed.

19. That Decrets, *in foro contradictorio*, before the Lords of Session be not again suspended, upon reasons competent to have been proponed, or which were repelled in the former Decreet. And to the effect it may be known, with the least expense, what Decrets are *in foro*, That the Keeper of the Minute-book make up a Book of the Decrets *in foro*, according as the same shall each day be given in to him by the Clerks, expressing the names of all the defenders for whom there is compearance ; And that the Clerk of the Bills from time to time, call for and receive a double of the said Minute-book of Decrets *in foro* ; And when any Bill of Suspension is to be presented by him, that at his peril he write on no Suspension of any Decreet *in foro*, contained in the said Book, until it be presented to the whole Lords in time of Session, and to three met together in time of Vacance, the deliverance bearing, that they were met together. And where there is once compearance for any Party, and Defences proponed, the Decreet shall be holden as done *in foro*, and all the Dispute proponed by the Advocats shall be insert therein, albeit the Advocat thereafter past from his compearance ; And that the first Protestation shall not be suspended, but upon consignation of thirty pounds, and the Suspension thereof shall bear that it is the second Suspension ; and so forth, all the Suspensions that shall be obtained thereafter, shall bear that the same is the third or fourth Suspension ; and that no Suspension shall pass of the second protestation, but in presence of the whole Lords in time of Session, and by three of the Lords met together in time of Vacance, the deliverance beiring as aforesaid : And that the Clerk of the Bills write upon no Bill of Suspension otherways, as he will

be answerable at his peril, and that the second and posterior Protestations shall be insert in the said Book, with the saids Decree*ts in foro*.

20. That where Processes are kept up unreturned by the Defenders Advocat longer then six dayes after the out-giving thereof, which is the time allowed for seeing of Processes, that upon complaint given in to the Lords thereanent, the Ordinary upon the Bills call the Advocat who keeps up the Process, and fine him in three pounds *Scots* for ilk day he hath kept the same, from the time that the Process was required from the Advocat, or his principal servant, personally at the Advocats Chamber, by way of Instrument under a Notars hand, unto the day that the complaint was given in, and six pounds for every day that the Process shall be detained by him, after in-giving of the complaint: And that one of the Macers be ordered to exact the fine, under the pain of deprivation; And to that effect, that he be warrantred to exclude the Advocat out of the House, and not to suffer him to enter the Outer-bar, untill he make payment, and that he return the money so exacted, to the Ordinary upon the Bills, whereof the one half is to be put in the poors Box, and the other half to be payed to the party Pursuer, if he desire the same, otherwise that the whole be put in the Box.

21. But when there are moe Defenders then one called in a Process, and several Advocats compearing for them, that the Advocat who taketh up the Process to see for the party principally concerned, in whose house the same is appointed to be seen, shall be allowed only four dayes for seeing the Process; and in case he do not return the same within that time, that he incur the penalties contained in the former Article: And that after the Process shall be returned, the same shall remain in the Clerks hands six dayes before it be called, during which time, any Advocat compearing for any other of the Defenders, may see the Process in the Clerks hands, and write thereupon for whom he compears, and subscribe the same, and may also borrow the same up from the Clerk, for the space of twenty four hours, upon his receipt and consignment of an Amaund, according to the importances of the Cause; and in case he do not reproduce the Process within the said space of twenty four hours, upon complaint made thereof, he is to lose the Amaund, and pay six pounds for ilk day he keeps the Process after the said space of twenty four hours, and the like execution to be used therefore, as in the former case of the Defenders Advocats not returning Processes, given out to them by the Pursuers Advocats. And Likewayes, if any Advocat during the said space of six dayes, be desirous to see the Process for any other party having interest, who was not called in the Process, that upon production of the parties interest in the Clerks hands, he be allowed to see in manner foresaid, he always consigning and subscribing for whom he compears: And in case of failzie to reproduce, being lyable as said is, and that the Advocat shall not be heard when the Cause is called, if he hath neglected to see in manner foresaid, whither he be compearing for any party called in the Process, or compearing for his interest.

22. In respect it is a great obstruction to the dispatch of Processes, that when Causes are called, Defences sometimes are proponed upon Writs, which being neither produced nor seen by the pursuers Advocats, all that is ordinarily done, is to ordain the Writs to be produced; therefore, where ever the Defenders Advocat is to found any Defence upon Writs, that at the returning of the Process, he also produce therewith the Writs whereupon he intends to found any alledgeance, and give in the Defence which he founds upon these Writs, and mark the particular clauses of the Writ whereupon he founds, otherwise no respect is to be had to the

alledgeance to be founded on these Writs, which were in any of the Defenders Advocats hands, or which, or any copy thereof were seen by the saids Advocats, which the pursuers Advocats shall be obliged to return within four dayes after they receive the same; otherwise, complaint may be made against them, as against Defenders Advocats for keeping up of Processes. And in case any other Writs come to their hands, after the returning of the Process upon which they will found, that in like manner they produce the same to the Pursuers Advocats, before calling of the Cause, under the same certification.

23. That the Suspender at the out-giving of the Suspension, produce therewith all his Verifications, and that at the calling of the Cause, if he have kept up the Verifications, and offer them to produce the same, that the Ordinary shall give Decreet, because the reasons are not verified conditionally; That if with the Verifications, the Suspender produce in the Clerks hands twelve pounds *Scots*, two parts thereof to be payed to the Charger, and the third part to the Poor, the same shall be received, and the parties heard thereupon, without enrolling of new; and therefore the Ordinary shall mark upon the Cause, *Decreet conditional*, to such a day: and if betwixt and the said day, obedience be not given, the Decreet is to be extracted.

24. That the Suspenders Advocat be not allowed to propone any new reasons of Suspension at the Bar, which was neither lybelled nor contained in the eiked Reasons of Suspension given out to, and seen by, the Chargers Advocats, unless therewith they consign in manner foresaid.

25. That because Processes are very much lengthned, by the long running of ordinary and incident diligence and terms for production in Reductions and Improbations; For remeid whereof in time coming, there shall only be two diligences against Witnesses, one by Horning, and another by Caption; and there shall be no incident Diligence sustained upon Acts, but where the same is craved and allowed at the pronouncing of the Act, and expressed therein, which shall proceed against the alleadged havers of the Writs, first by Horning, charging them to compear and produce upon oath, and next by Caption, in case they do not compear and depone; and that there be only one term for production in single Reductions, and two in Improbations: And that the Clerks insert no Reservations in Acts for Production, but that all exceptions competent before production, be discussed before assigning of terms.

26. That no more Advocats be employed or marked in any Cause for a Party, but only three in the Inner-house, and three in the Outer-house at most; and that only two be allowed in the Inner-house, to speak one after another upon one side, before the other Party make an answer; And that the Lord Chancellor or President keep the Advocats closs to the point, and that no Advocat be allowed to speak above half an hour together at most, at one time.

27. That the Allowance of Advocats in time coming, be regulate according to the quality of the persons who employes them, in manner following, viz. that for every Consultation, Pleading thereupon, and drawing Bills upon any Interloquitor thereanent altogether, there be given at most to any Advocat, by Noblemen eighteen pounds, by Knights and Barrons fifteen pounds, by Gentle-men and chief Burgeses twelve pounds, and by all the rest of the people nine pounds: And that nothing be allowed for drawing Informations to be given to the Lords after Dispute, but to one Advocat only, and that the Allowance therefore be only the half of what is allowed for the Consultation.

28. That the parties Pursuer and Defender do give in\*with the Process, a Declaration under their hands, bearing, That as they shall answer to God, they have not given, nor shall give any more to any Advocat employed by them in that Process, for every Consultation comprehending as aforesaid, then the foresaid Allowance; which Declaration is to be given in by the Defender at the return of the Process, and by the Pursuer before the Process be called. And in case of the Clients Minority, his Tutors or Curators, and in case of his absence, or that he hath employed another to disburse the money for him, the person so employed shall give in the foresaid Declaration upon Oath, which shall bear, That he being the only person employed to disburse money to Advocats in that Process, he hath not given, nor shall give any more then as aforesaid. And in regard these who are already admitted Advocats have given their oaths, that they shall alwayes observe the saids Rates, that no Advocat be admitted hereafter till they give that Oath.

29. And because by the Act of Parliament, one thousand, six hundred and twenty one, the rates of Writs are ordered conform to an Act of the Lords of Privy Council and Lords of Session, in *anno*, one thousand, six hundred, and six, the effect whereof hath been frustrate, because nothing thereby is provided to Clerks Servants: And in respect the rates of all things are much increased since that time; Therefore, that the rates of the Clerks of Session be as followeth, *viz.* For Acts, Decrets, Protestations and Diligences, there shall be only payed to the Clerk and his Servants, three pounds *Scots* for each sheet, written in the same manner as they are now accustomed, conforme to a Pattern signed by this Commission, and kept by the Lords of Session, excepting Decrets of Transumpt, Transferring, and of Registration by way of Action, and Commissions wherein there is no dispute, for which there shall be payed three pounds *Scots* only for the first sheet, and twenty shillings *Scots* for ilk one of the rest of the sheets. And as to other Writs passing that Office, the same rates be observed which are contained in the said Act of Parliament; And that the Clerks or their Servants take no money for production of Writs, or giving up of the same again, minuting of Disputes, or booking of Acts and Decrets, all which shall be payed by the saids Extracts, but that there be allowed to them two merks for taking a Parties Oath, and one merk for every Witnesses deposition, and thirty shillings *Scots* for calling of every Act in presence of the Ordinary. And that the Clerks or their Servants do not mark upon any Process, Calling, or Compearance, or the calling of any Act, but what was publickly done by a Macer, that the Advocats may have timeous notice to satisfie the conclusion of Acts. And that no Decrets be pronounced conditionally, but simply, according to the Act to be extracted twenty four hours after the same is read in the Minute-book; and that every *Sederunt* day, the Minute-book be read out fully, that the Lieges be not delayed or necessitate to attend. And that the Clients shall in the same manner, as in relation to Advocats allowance, give their Oaths that they have kept, and shall keep the saids Rates, which shall be contained in a Paper, with their Declaration in relation to Advocats. And seeing the present Clerks and their Servants have given their Oaths, that they shall alwayes observe the saids Rules and Rates, that no Clerk be admitted hereafter, till he give that Oath; excepting Acts and Decrets of Contentions dispute in presence of the Lords, which are to be at the discretion of the Party, conform to the Act of Parliament. And in regard diverse Processes after dispute and Interloquitors pronounced therein, either in *presentia*, or in the Outer-house, are transacted

and settled by the Parties, so that the Processes come not the length of a Decreet, or if Decreet be pronounced, the same is not extracted : And it being just and reasonable, that the Clerks should have allowance for the pains taken by them in these Processes ; therefore, that the Clerks in these cases be allowed to take from their Clients, satisfaction as if DECREETS were extracted, according to the sheets of the Act of *Litis contestation*, or other Act in the Process ; or if their be no Act, according to the sheets of the Summons, Suspension or Advocation ; and if the Cause was dispute in the Inner-house, according to the sheets the Minutes of the Processes would amount to, if the same were extended into an Act or Decreet.

30. And anent the Clerks of the Bills and his Servants, that the Rates in the said Act of Parliament, one thousand, six hundred, and twenty one, be in all points observed, with this alteration, That whereas that which is allowed by the said Act for the Acts of Caution, with the relief which comprehends the Bills of Suspension, is too low for the Clerk and his Servants, That there be allowed to the said Clerk and his Servants therefore, three pounds and a merk *Scots* and no more ; And seeing the present Clerk of the Bills and his Servants, have made faith that they shall observe the saids Rates, that any Clerk of the Bills who shall be admitted hereafter, shall at his admission give that Oath, and likewise his servants : And in case there be moe persons contained in the saids Bills of Suspension then one, that every such person, except the chief person, shall pay six shillings eight pennies, untill they come the length of ten persons, and no allowance is to be granted for any exceeding that number, nor for a Community more then the said number of ten : And for Relaxationes, six shillings eight pennies for every person more than one, untill they come to the number of ten persons, and no more to be taken for any greater number or Community, which dues shall be payed at the first in-giving of the Bill of Suspension, and shall be retained by the Clerk, whether the Bill be past or not, and no more to be given for that Bill, or for any new Bill, which shall be given in, in that matter. And as for the allowance of Comprisings, that the rate thereof be fourty shillings *Scots*, where the sums contained in the Comprisings (by and attour the Sheriff-fee) do not exceed two thousand pounds *Scots* ; And if the sums comprised for be above two thousand pounds, that there be payed four pounds *Scots* ; and that this be in satisfaction of all that is to be given in that Office, both for Master and Servants.

31. In respect several persons, being neither Advocats, nor Advocats Servants, do take upon them, under the name of Agents, to meddle and negotiate in Processes, who are found to be of no use, but burdensome to the Lieges ; That hereafter all the Agents be debarred the House, and not permitted to negotiate in, or mannage Processes ; and recommends to the Lords of Session to see the same punctually observed.

32. That the Keepers of the General Registers of Hornings and Inhibitions, and of Seasings and Reversions ; As also, the Keepers of these Registers in the several Shires, in time coming, be careful to book all Hornings, Inhibitions, Interdictions, Seasings, Reversions, and others registrat by them ; And that they make exact Minute-books relating to these Registers, these of Hornings, Inhibitions, and Interdictions, containing the names, Sirnames and Designations of the Parties, Principal and Cautioners ; And these of Seasings, Reversions and others appointed by the Act of Parliament to be registrat in that Register, containing the Names and Designations of the Parties, and the common Designation of the Lordship, Barrony or Tennendry of the several Lands mentioned in the Writ ; And that the

Clerk of Register, or any whom he shall appoint, every quarter of the year, compare the Minute-book with the general Registers, and subscribe the Minute-books at the collationing of the same ; And in the several Shires, that the Sheriff, Bailiff of the Regality or Royalty, or their Deputies (with whom, any two of the Justices of Peace to be nominate by the whole Meeting, are allowed to be present) be appointed quarterly, *viz.* upon the first Tuesdayes of *February, May, August* and *November*, to call for, and take inspection of, the saids Registers, and of the Minute-books relating thereto ; and after collationing of the same, that they with the saids two Justices of Peace, if they be present, subscribe the Minute-book : Certifying the saids Sheriffs and Bailiffs, if they do not meet and compare the saids Registers at the several times above-specified, They shall be lyable in the penalty of One Hundred pounds *Scots* for ilk failzie ; and Certifying the Clerks, if they shall not have the Books in readinesse at the aforesaid times, or if any Hornings, Inhibitions, Seasings, Reversions, and others foressaid then in their hands, shall not be registrat in the Books, they shall incur the pain of deprivation, and be lyable in payment of the parties damage : And that the Clerks, keepers of the saids Registers book all Hornings, Inhibitions, Interdictions, Seasings, Reversions, and others which now are in their hands, for the space of forty years by-gone, and have exact Minute-books relating thereto, in manner foresaid, within the space following, *viz.* The keepers of the general Registers betwixt and the first of *June*, 1674. and the Keepers of the particular Registers in the several Shires, betwixt and the first of *June*, 1673. And that all Hornings and Inhibitions, registrat in the Shires, be marked by the Keepers thereof, conform to the 21. Act of the Parliament, 1600. under the pains aforesaid ; And that in the *interim*, betwixt the collationing of the Books, the Clerks shall be obleidgen to keep a private Minute-book for their own use, wherein they are to insert a Note of all Hornings, Inhibitions, Interdictions, Seasings and Reversions, as they are given in to be registrat : And in case any be omitted out of that Minute-book, they shall incur the pain of deprivation, and be lyable to pay the parties damage. Whilk Minute-books *respective* foressaid, as well for the space of forty years by-gone as in time coming, the Clerk shall be obliged to make patent to all His Majesties Lieges, whensoever they shall desire to see the same, upon payment of the dues following, *viz.* Thirty shillings *Scots* for inspection of the minute-book of the general Register of Seasings and Reversions, and twenty shillings *Scots* for that of the general Register of Inhibitions ; and for that of the general Register of Hornings, twelve shillings *Scots* ; and for inspection of the Minute-book of the particular Register of Seasings and Reversions in the several Shires, twelve shillings *Scots* ; And for that of Hornings and Inhibitions, six shillings and eight pennies *Scots* money. And it is hereby Declared, that the care of seeing the premisses done and performed, after the expiring of this Commission, is committed to the Lords of Session.

33. As for Writers to the Signet, it is Ordained, that the rates of all Writs to be formed and written by them, be as followeth, *viz.* For Bonds, Assignations, Translations, Discharges, Tacks and other Writs of that nature, and likeways for Summons and all Letters that pass the Signet, there be allowed only eighteen shillings *Scots* for the first sheet, and twelve shillings *Scots* for ilk an of the rest of the sheets ; Excepting Suspensions and Advocations, for the first sheet whereof they shall have forty shillings *Scots*, and two Merks *Scots* for ilk sheet more : And where Summons are blank in any part thereof, that the same be only payed for, according to the sheets which are written and filled up. And as for Contracts,

Dispositions, and other securities of Lands, Annual-rents, or other heretable Rights, Charters, Signatoures, Precepts in Latine, and other Writs of that nature, and likewise for Comprisings and Services, there shall be only payed three pounds *Scots* for the first sheet thereof, and thirty shillings *Scots* for each of the rest of the sheets, the same being alwayes written, conform to a patern to be signed by the Lords of Session ; And that no distinct payment be taken by the Writers, or their Servants, for Bills whereupon Summons or Letters are raised, or for claimes whereupon Services or Comprisings do proceed, or for Scrolls of any of the saids Writs ; Which rates or prices aforesaid shall be in satisfaction of all that is to be given, both to Master and Servants : And where Bonds, Assignations, Translations, Discharges, Contracts, Dispositions, and other securities aforesaid, are drawn or written by any persons who use to write for payment, not being Writers to the Signet, that there be payed to them only two parts of the rates allowed to Writers to the Signet, in manner foressaid. And that all Writers to the Signet, and others residing within the town of *Edinburgh*, who use to write for payment, shall compear before the Lords of Session betwixt and the first of *December* next, and give their oaths that they shall observe the said rates ; and that these who reside in any other place of the Kingdom, shall betwixt and the said day, take the foressaid oath, in presence of the Sheriff of the Shire or his Depute, or other ordinar Magistrat of the place ; or in case they dwell within a Burgh Royal, before the Magistrats of the Burgh ; and the Writers to the Signet and other persons aforesaid, are hereby discharged to form or write Writs of any kind, after the said first of *Decemb.* next, unless they take the said Oath, under the pain of deprivation, and such other punishment as the Lords of Session, or the ordinary Magistrats of the place *respective* shall think fit to inflict. And it is hereby Declared, that it shall not be lawful to any person, to be Clerks to the deducing of Comprisings which are led by Dispensation within the Town of *Edinburgh*, or to Services led before the Macers, except they be Writers to the Signet.

#### *Concerning the JUSTICE-COURTS.*

SEeing Causes Criminal are of the greatest importance, and may extend to the Lives and Liberties of any of His Majesties Subjects, and their persons and Fortunes : and seeing the punishment of Crimes is of the greatest consequence for the safety and security of his Majesties person and Authority, and the Peace and Quietness of the Kingdom ; and therefore, matters Criminal ought to be determined in the most solemn, exact and regular way, that the Loyal and Innocent may be in full security, and Offenders may be punished either in the most publick places of the Kingdom, or in the places where the Crimes have been committed, to terrifie others from the like : That whereas formerly assessors from time to time were appointed to the Justice-General in matters of importance, which being ambulatory, cannot be so convenient, as if all the Members of that Court were settled and chosen by His Majesty of fit persons, who might make it their work to make a just and constant procedure in Matters Criminal.

1. For that effect, that the Office of Deputes in the Justice-Court be suppressed, and that five of the Lords of Session be joyned to the Justice-General and Justice-Clerk, and all of them invested with the same and equal Power and Jurisdiction in all Criminal Causes ; That the Justice-General being present preside, and in his absence the Justice-Clerk, and in absence of both, that these present elect one of



their number to preside, four of the whole number being alwayes the *Quorum* of that Court, except at the Circuit-Courts.

2. That they be appointed to meet each Monday at nine of the clock in time of Session, and oftner if businesse so require.

3. That the persons to pass upon Assizes be listed, and their Names and Designations insert in an Roll to be signed by the said Judges or their *Quorum*.

4. That for the splendour of that Court, all the Judges sit in red Robes faced with white, that of the Justice-Generals being lined with Ermine, for distinction from the rest.

5. That once a year, in the Moneth of *April* or *May*, Circuit Courts be kept, two of their number appointed to go and keep Courts at *Dumfries* and *Jedburgh*, two at *Stirling*, *Glasgow* and *Air*, and other two at the Towns of *Perth*, *Aberdeen* and *Inverness*; the Justice-General being alwayes super-numerary in any of these Circuit-Courts.

6. That it be left and recommended to the Judges of that Court, to regulat the inferior Officers thereof, and order every other thing concerning the said Court.

7. That a convenient Room be appointed for their meetings, Benches for the Judges, a place for the Justice-General, more eminent then the Seats of the other Judges; That the Advocats, Clerk, Assize and Pannels have distinct places appointed to them.

8. That the Clerk of the Court, nor no other person, be present with the Assize after they are inclosed.

9. That the Chancellor of the Assize mark what way every individual person who is upon the Assize shall vote, whether condemning or assolzeing, and that on same Paper wherein the Verdict of Assize is written; which after the pronouncing of the Verdict, is to be closed and sealed with the Seals of the Court, of the Chancellor of the Assize, and of so many moe of that number, as the Chancellor shall think fit, and never to be opened again, but by order of the Judges: With certification, if the Clerk who shall have the keeping of the said Verdict, do make open the same without warrand, he shall be deprived of his Office, and otherwayes punished as the Judges shall think fit.

10. That in all Criminal Pursuits, the Defender or his Advocats be alwayes the last speaker, except in cases of Treason and Rebellion against the King.

11. That when any Criminal Libel or Summons of Exculpation are given and execute against any Party, that at the same time, Lists of the Witnesses to be adduced for proving of the said Libel and Summons, and of the persons who are to pass upon the Inquest, be also given to them; to the effect, the Party may know what to object against the saids Witnesses and Assizers, and may take forth Diligences for summoning of Witnesses for proving of their objections, why any contained in the saids Lists should not be admitted to be a Witness, or upon the Assize.

*Concerning the Exchequer.*

1. That there be payed to the Keeper of the Thesaurers Register and his Servants, for registration of Signatures fourty shillings Scots for the first sheet, and twenty shillings Scots for each other sheet of the Signature given in; And that neither he nor his Servants take or exact more, upon any account, or for moe sheets then the Signature consisteth of, and that they give their Oaths to that effect.

2. That there be payed to the presenter of Signatures, for each Signature containing an Barrony, or Lands above that value, and which is to pass the Great Seal, six pounds Scots; And if it be of Lands under a Barrony, three pounds: And for all Signatures which are to pass the Privy Seal, only half a Crown. And that he make Faith to observe these Rates.

3. That no *Æques* be made in the Exchequer, by the Vassals of His Majesties Property, for any Blensh or Few-duties which are under the sum of ten pounds Scots; But as to these, that Lists of the Vassals and of the Blensh and Few-duties payable by them, be subscribed by the Commissioners of His Majesties Thesaurary, and sent to the Sheriffs of the several Shires, who, or their Deputes, shall charge the Vassals for payment of these Duties, and shall be countable for them to the Exchequer; And that upon payment by the Vassals of their saids Few and Blensh-duties, the Sheriffs or their Deputes shall be obliged to grant to them Discharges thereof, without any money or gratification to be given therefore, either to the Sheriff or his Servants, except a Merk Scots only.

4. That the present way of making the counts of Exchequer in Rolls, be altered, and that the same be made hereafter in Books of Parchment; That *Æques* be made yearly; And that for all the Lands contained in one Chartor, belonging to one Heretor, there be made but one *Æque*.

AND further, His Majesty Recommends to the Commissioners aforesaid, that what by the shortness of time is not yet determined, as to the Commissary-courts, Sheriff-courts, Town-Courts, and all other Courts and Judicatories of the Kingdom, may be done with all convenience, conform to his Majesties Commission granted to them; and that they return their Judgements thereof to His Majesty, that He may give such order therein, as He shall think fit.<sup>289</sup>

#### 42. *ACT for establishing Correction-houses for Idle Beggars and Vagabonds.*

THE Kings Majesty, considering the many good Laws and Statutes made by himself and his Royal Predecessors, for suppressing of Vagabonds, Beggars and Idle persons, who are a great burden and reproach to the Kingdom, and for the most part, live without all Law or Rule, Sacred or Civil; And that a numerous brood of such persons are dayly increasing, who if they were set to work, and bred to Trades & callings, the people might not only be disburdened of them, but they might, in a short time & upon far less expense, become useful and profitable for the whole Kingdom. And withall considering, that the effect of all these good Laws hath been frustrate, because there hath been no place provided wherein such poor people might be set to work, nor persons appointed to have the charge and

<sup>289</sup> This act is composed of three distinct parts, the first of which relates to the Court of Session, the second to the Court of Justiciary, and the third to the Exchequer.

The first part of the act, viz. that relating to the Court of Session, is composed of 33 articles, of which articles 28, 29, 30, and 33, are expressly repealed by 1681, ch. 109, so far as concerns clerks of the Session, Clerks of the Bills and writers to the Signet, and all the articles seem to be superseded in modern practice, with the exception of articles 12, 16, and 19, which appear still in force in many respects. With regard to article 16, see 50th George III. ch. 112, § 28, and Darling's Form of Process, p. 4-5. In reference to art. 19, see Darling, p. 193, and authorities there referred to.

The second part of this act is the statutory authority which constituted the present Court of Justiciary, but is now superseded in many particulars. See Erskine, b. i. tit. iii. § 26.

The third part of the act is now entirely superseded by subsequent statutes.

oversight of them : For remeid whereof, his Majesty, with advice and consent of His Estates of Parliament, Statutes, and Ordains, that the Magistrats of the Burghs following, betwixt and the term of Whitsunday next, 1673. provide Correction-houses for receiving and entertaining of the Beggars, Vagabonds and Idle persons within their Burghs, and such as shall be sent to them out of the Shires and Bounds after-specified ; and that they appoint Masters and Overseers of the same, who may set these poor persons to work ; viz. one Correction-house at the Burgh of *Edinburgh*, for these of the Town and Shire of *Edinburgh* ; one at the Burgh of *Haddingtoun*, for those of the Shire of *Haddingtoun*, one at *Dunse* for the Shire of *Berwick* ; one at *Jedburgh*, for the Shire of *Roxburgh* ; one at the Burgh of *Selkirk*, for the Shire of *Selkirk* ; one at the Burgh of *Peebles*, for the Shire of *Peebles* ; one at *Glasgow*, for the Shire of *Lanerk* ; one at the Burgh of *Dumfreis*, for the Shire of *Dumfreis* ; one at the Burgh of *Wigtoun*, for the Shire of *Wigtoun* ; one at the Burgh of *Kircudbright*, for the Stewartry of *Kircudbright* ; one at the Burgh of *Air*, for the Shire of *Air* ; one at the Burgh of *Dumbartoun*, for the Shire of *Dumbartoun* ; one at the Burgh of *Rothsay*, for the Shire of *Bute* ; one at *Paisly*, for the Shire of *Renfrew* ; one at *Stirling*, for the Shires of *Stirling* and *Clackmannan* ; one at *Linlithgow* for the Shire of *Linlithgow* ; one at *Culross*, for these twelve Paroches in the Shire of *Perth*, belonging to the Presbytery of *Dumblane* ; one at the Burgh of *Perth*, for the rest of the Shire of *Perth* ; one at *Montrose*, for the Shire of *Kincairden* ; one at the Burgh of *Aberdeen*, for the Shire thereof ; one at *Inuerness*, for the Shires of *Inuerness*, *Ross*, and *Cromarty* ; one at the Burgh of *Elgin*, for the Shires of *Elgin* and *Nairn* ; one at *Inverary*, for the Shire of *Argyl* ; four in the Shire of *Fife*, viz. one at *St. Andrews*, one at *Coupar*, one at *Kirkaldy*, and one at *Dumfermling*, for the four ordinary Divisions of that Shire ; one at *Dundee* for the Shire of *Forfar* ; one at the Burgh of *Bamff*, for the Shire of *Bamff* ; one at the Burgh of *Dornoch*, for the Shire of *Sutherland* ; one at *Week*, for the Shire of *Caithness* ; and one at the Burgh of *Kirkwall*, for the Shire of *Orkney* and *Zetland* ; each of which Houses shall have a large Closs, sufficiently inclosed for keeping in the said poor people, that they be not necessitat to be alwayes within doors, to the hurt or hazard of their health. And in case the Magistrats of the said Burghs, or any of them shall not provide and have in readinesse, the saids Correction-houses betwixt and the said term of Whitsunday next, they shall incur the pain and penalty of five hundred Merks Scots money, and that quarterly, until the Correction-houses be provided : Which penalties shall be payed to the Commissioners of Excise, in the respective Shires or Bounds from which the saids poor persons shall be sent, to the saids Correction-houses : And the saids Commissioners are hereby warranted to raise Letters of Horning, and use other execution at their instance, against the Magistrats of the saids Burghs for payment of the penalties that shall be incurred by them, in manner foresaid ; which penalties shall be applied by the saids Commissioners, for building or buying of houses to the effect foresaid : And in the mean time, until the saids houses be provided, the Magistrats of the said Burghs are required to dispose of these Beggars and poor People, who were either born within their respective Burghs, or have haunted therein the last three years, in some convenient places, so as they may not go begging on the Streets, or at houses within the Town. And for the better enabling of the saids Burghs, to bear the charges and expences of the saids Correction-houses, His Majesty, with Consent of the saids Estates of Parliament, Statutes and Ordains, that the Contribu-

tions and Allowances for maintaining of the Poor, appointed by the fifteenth Act of the third Session of His Majesties first Parliament, Intituled, *Act concerning Beggars and Vagabonds*, be applyed for the use of the saids Correction-houses, whereby they shall have two shillings Scots for ilk poor person *per diem* that shall be sent to them, and entertained and bred by them, for the first year; and twelve pennies Scots *per diem*, for the space of three years thereafter, during which they shall entertain and educate them, together with the profit arising from the labour and work of the saids poor persons, for seven years thereafter: Which contributions are to be payed by the Paroches relieved of the said Poor, in manner contained in the said Act. And to the effect it may be known, what poor persons are to be sent to the said Correction-houses, and who are to be kepted and entertained by the Contributions at the Paroch-kirks for the Poor, the Ministers of ilk Paroch, with some of the Elders, and in case of Vacancy of the Kirks, three or moe of the Elders are hereby ordered to take up an exact List of all the poor persons within their Paroches, by Name and Sir-name, condescending upon their age and condition, if they be able or unable to work, by reason of age, infirmity or disease, and where they were born, and in what Paroches they have most haunted during the last three years, preceeding the uptaking of these Lists; intimation being alwayes made to the whole Heretors of the Paroch to be present, and to see the Lists right taken up; and that the Heretors who, and the Possessors of their Land, are to bear the burden of the maintainance of the poor persons of each Paroch, or any of them who shall meet with the saids Ministers and Elders, shall condescend upon such as through age and infirmity, are not able to work, and appoint them places wherein to abide, that they may be supplied by the Contributions at the Paroch-kirk: And if the same be not sufficient to entertain them, that they give them a Badge or Ticket to ask almes at the dwelling-houses of the Inhabitants of their own Paroch only, without the bounds whereof, they are not to beg; and that they do not at all resort to Kirks, Mercats, or any other places where there are meetings at Marriages, Baptismes, Burials, or upon any any other publick occasion: And likewise, that such of the saids poor persons as are of age and capacity to work, be first offered to the Heretors or Inhabitants of each Paroch, that if they will accept any of them to become their Apprentices or Servants, they may receive them upon their obleigment to entertain and set to work the saids poor persons, and to relieve the Paroch of them; For which cause, they shall have the benefit of their work until they attain the age of thirty years, conform to the tenth Act of the twenty two Parliament of King *James* the sixth, and that the rest of the saids poor persons be sent to the Correction-houses, for whose entertainment, the saids Heretors shall cause collect the saids Contributions, and appoint a quarters allowance to be sent along with them, with Cloathes upon them, to cover their nakednesse, and the said allowance to be payed quarterly thereafter, by way of advance. With power also to the saids Commissioners of Excise in each Shire, quarterly to take an account of the diligence of these of each Paroch in performing of the premisses: And in case of their neglect, to appoint other persons to make the saids Lists, and Collectors to uplift the saids Allowances, and to bring them to Correction-houses. And the Sheriffs their Officers, and Mayers and Constables are hereby required to concur and be assisting to the carrying and delivering of the saids poor persons to the Correction-houses. And in case any Heretors shall find within their bounds any other Vagabonds, Beggars or Idle persons, not being in service, nor

having any visible way or stock to entertain themselves, who were not born, nor did haunt formerly within their bounds; they are hereby empowered to seize upon such persons, and to send them to the Correction-houses; and to charge the Magistrates or Masters of the saids houses to receive them, without advance of any allowance: With power notwithstanding to the saids Magistrates or Masters, to charge the Heretors of the Paroches, where these idle persons were born, or have most haunted the last three years, for the allowance of such of them as are not bred to work; And as to such of them as can work, the Masters shall have the benefit of their work for their meat. And his Majesty, with advice foresaid, doth impower and require the Masters of the Correction-houses to put and hold the saids poor people to work, as they shall see them most capable and fit; And in case of their disobedience, to use all manner of severity and correction, by whiping or otherwayes, (excepting torture), and to detain them within the said Correction-house and Closs thereof; with this provision, that in case any of the saids poor persons being received, shall be suffered to escape to burthen the Countrey of new, that the Magistrates shall be charged to recover and receive them again, without any allowance thereafter, during the said space of four years, under the pain of fourty pounds *Scots* for each person so escaping: With power also to them, to receive disobedient servants, and to put them to work, and to correct them according to their demerits. Likeas his Majesty, with advice foresaid, Ordains Letters of Horning and other execution to pass hereupon, at the instance of these who shall send the poor in manner foresaid, against the Magistrates of Burghs for receiving the poor sent to them, with the quarters allowance foresaid: And likewise, Letters of Horning to be direct at the instance of the Masters of the saids Correction-houses, against these lyable in payment of the said allowance for the poor, conform to the said Act of Parliament, and that quarterly in manner foresaid; and at the instance of the Collectors, to be named by the Heretors or Commissioners of Excise, against the Heretors and Inhabitants of the saids Paroches, conform to the said Act of Parliament. It is alwayes hereby provided, that it shall be lawful to Coal-masters, Salt-masters, and others who have the Manufactories in this Kingdom, to seise upon any Vagabonds or Beggars, where ever they can find them, and to put them to work in their Coal-heughs or other Manufactories, who are to have the same power of correcting them, and the benefit of their work, as the Masters of the Correction-houses. And furdur, His Majesty, with advice foresaid, recommends and commits the execution of this present Act to His Privy Council, with power to them to appoint all means and wayes for making the same effectual; To whom the Commissioners of excise in the several Shires, are hereby required to return an account of their diligence in the premisses, by some of their number the second Council day in *November*, and the second Council day in *June* yearly, under the pain of Fourty pounds *Scots* for every Commissioner of Excise, who shall be deficient in doing his part of the premisses.<sup>290</sup>

#### 45. *ACT Concerning Adjudications.*

THE Kings Majesty, considering how far Comprisings have deborded from the first design of the Legislators, who did never intend that opulent and great *Estates* should be carried away for inconsiderable sums, nor that Messengers or ignorant persons should be Judges in matters of so great importance; And considering the

<sup>290</sup> In reference to this act, see Dunlop on Parochial Law, p. 326, *et seq.*

great prejudice ensueing to Trade & Commerce, by the length of the legal Reversion formerly granted, the Creditor not being able to command his money, and both Debitor and Creditor neglecting to use any policy & improvement of the Lands during the running of the legal Reversion; And that after expiring thereof, Comprisings have become the foundation of much fraud; the right thereof being sometimes acquired by the appearand Heirs of the Debitor, who thereby secluded the lawful Creditors: And that by the ignorance of Nottars and Messengers, and many unnecessar solemnities, oftines Nullities have happened in Comprisings, and the same have alwayes been most expensive by heaping of penalties and Sheriff-fees. And His Majesty, being desirous to secure equally the interest of Debtors and Creditors, Doth, with advice and consent of His Estates of Parliament, Statute and Ordain, that in place of Comprisings, the Lords of Session, upon Processes raised before them at the instance of any Creditor against his Debitor, Principal or Cautioner, shall Adjudge and Decern to the Creditor in satisfaction of his Debt, as the same shall be decerned by the saids Lords, such a part of the Debtors Estate, consisting in Lands and other Rights which were in use to be appraised, as shall be worth the sum principal and Annual-rent then restand to the Creditor, and a fift part more, in respect the Creditor wants the use of his money, and is necessitat to take Land for the same, besides and attour the composition to the Superior, and expences of the Infestment; Which Adjudication shall be made, according to the several rates of the Lands and other Rights in the places where the same do ly; And for that effect, Probation shall be taken by the saids Lords for the part of the Creditor, and likewise for the part of the Debitor (if he shall desire the same) concerning the yearly Rent and value of the saids Lands and Rights, and what they have paid for five years by-gone, and what the same may pay, and the rates and prices at which such Lands and Rights are usually sold in these places of the Kingdom where they ly; With Power to the saids Lords to determine what warrandice the Debitor shall be lyable in to the Creditor, of the Lands and Rights so adjudged as they shall find just: Upon which Decreet of Adjudication, it shall be lawful to the Creditor immediately to enter to the possession of the Lands or other Rights adjudged to him, and to intromet with the Mails and Duties thereof, in satisfaction of his Annual-rent during the not redemption, without being lyable to any restriction or action of Count and Reckoning. And in case there be adjudged Lands affected with Life-rents, or any Casualty or other Right not yielding Rent during the running of the Legal after-specified, the same shall be exprest in the said Decreet, together with that part of the sum effeirand thereto; That in case of redemption, the Creditor may have his Annual-rent for that part of his sum, for which he had no profit in manner foresaid: Which Lands and other Rights adjudged as said is, shall remain heretably and irredeemably with the Creditor, in case they be not redeemed within the space of five years after the Decreet of Adjudication, by payment or consignation of the sums principal and Annual-rent, for which the Adjudication did proceed, the Composition payed to the Superior, and expences in obtaining infestment and Annual-rent of the same, in so far as is not satisfied by the Creditors possession in manner foresaid: And the Creditor being once in peaceable possession of the saids Lands or Rights, conform to the Decreet of Adjudication, it shall not be lawful for him to use any further execution against his Debitor, except in the case of eviction upon the warrandice to be decerned by the saids Lords; But it shall be leisum to the Creditor, to use all manner of execution against his Debitor Principal or Cautioner, by Horning, Caption, Arreastment or otherwise, until he enter to the actual possession of the Lands to be Adjudged in manner foresaid.

And it is hereby Statute and Ordained, that no Comprisings shall be led in time coming, of any Lands or other Rights, which are not already comprised; But prejudice alwayes of any apprisings led before the date of this Act, or to be deduced of Lands or other Rights already apprised, whereof the Legal is not expired, which are to have course conforme to the Laws and Acts formerly made thereanent: It is alwayes hereby Provided and Declared, that in case the Debitor shall abstract the Writs and Evidents of the Lands and other Rights to be adjudged, and shall not produce a sufficient Right thereof, and deliver the same, or Transumps thereof to the Creditor as the Lords shall Judge necessary; and in case he shall not renounce the possession of the Lands and other Rights to be adjudged, and ratifie the Decreet of Adjudication, to the effect the Creditor may enter thereto summarly, without any impediment, so that the Creditor may have a clear right and quiet possession: Then and in that case, it shall be leisom to the Creditor to adjudge all or any Right belonging to his Debitor, in the same manner as he might have apprised the same, conform to the Act of Parliament, 1661. anent the payment of Debts betwixt Debitor and Creditor, in all points, under the Reversion, and with the power competent to other Creditors exprest in the said Act. And it is hereby Declared, that neither the Superior, nor the Adjudger shall be prejudged by this Act, but that they shall be in the same case after citation in this Process of Adjudication, as if Apprising were led of the Lands at that time, and a Charge given to the Superior thereupon: Whilk Decrees of Adjudication above-mentioned shall be allowed by the Lords of Session, as Apprisings now are; And the allowance shall be registrat in the same manner, and under the same certification, with the allowances of Comprisings; To the effect, the same may be known, and that Creditors may not be disappointed by Adjudging Lands already adjudged to others.<sup>291</sup>

47. *ACT concerning the Priviledges of the Office of Lyon King at Armes.*

OUR Sovereign Lord, considering, that albeit by the 125. Act of the 12. Parliament, holden by His Majesties Grand-father in the year, 1592. the usurpation of Armes by any of His Majesties Leidges, without the Authority of the *Lyon King of Armes*, is expressly discharged; And that in order thereto, power and Commission is granted to the *Lyon King of Armes*, or his Deputies to visit the whole Armes of Noble-men, Barons and Gentle-men, and to matriculate the same in their Registers, and to fine in one hundred pounds, all others who shall unjustly usurp Armes; As also to escheat all such Goods and Gear, as shall have unwarrantable Armes ingraven on them. Yet, amongst the many irregularities of these late times, very many have assumed to themselves Armes, who should bear none, and many of these who may in Law bear, have assumed to themselves the Armes of their Chief, without distinctions, or Armes which were not carried by them or their Predecessors. Therefore, His Majesty, with advice and consent of His Estates of Parliament, Ratifies and Approves the foresaid Act of Parliament; And for the more vigorous prosecution thereof, doth hereby Statute and Ordain, that letters of publication of this present Act be direct to be execut at the Mercat-cross of the head Burghs of the Shires, Stewart-

<sup>291</sup> In reference to this Act, see Ersk. b. ii. tit. xii.; and Bell's Com. i. p. 703, *et seq.* The last clause relating to allowances of Adjudications, is superseded by the Articles of Regulations concerning the Session 1695, § 24, the 1st and 2d Geo. IV. ch. 38, § 18, and the 1st and 2d Vict. ch. 118.

ries, Baileries of Royalty and Regality, and Royal Burroughs, charging all and sundry Prelates, Noblemen, Barons and Gentle-men, who make use of any Arms or Signs Armorial, within the space of one year after the said publication to bring or send an account of what Arms, or Signs armorial they are accustomed to use, and whither they be Descendants of any Family, the Arms of which Family they bear, and of what Brother of the Family they are descended; With Testificats from persons of Honour, Noble-men or Gentle-men of quality, anent the verity of their having and using those Arms, and of their descent as aforesaid, to be delivered either to the Clerk of the Jurisdiction where the persons dwells, or to the Lyon Clerk, at his Office in *Edinburgh*, at the option of the party, upon their Receipts *gratis*, without paying any thing therefore; Which Receipt shall be a sufficient exoneration to them, from being obliged to produce again, to the effect, that the *Lyon King of Arms* may distinguish the saids Arms, with congruant Differences, and may matriculate the same in his Books and Registers, and may give Arms to vertuous and well deserving persons, and Extracts of all Arms, expressing the blasoning of the Arms under his hand and Seal of Office; For which shall be payed to the Lyon, the sum of twenty merks, by every Prelate & Nobleman, and ten merks be every Knight and Baron, and five merks by every other person bearing Arms, and no more: And His Majesty hereby dispenses, with any penalties that may arise be this or any preceeding Act for bearing Armes, before the Proclamation to be issued hereupon. And it is Statute and Ordained, with consent foresaid, that the said Register shall be respected as the true and un-repealable rule of all Armes and Bearings in *Scotland*, to remain with the Lyons Office as a publick Register of the Kingdom, and to be transmitted to his Successors in all time coming: And that whosoever shall use any other Armes any manner of way, after the expiring of year and day from the date of the Proclamation to be issued hereupon, in manner foresaid, shall pay one hundred pounds money, *toties quoties*, to the Lyon, and shall likewise escheat to His Majesty, all the moveable Goods and Gear upon which the saids Armes are engraven, or otherwise represented. And His Majesty, with consent foresaid Declares, that it is only allowed for Noblemen and Bishops to subscribe by their Titles; And that all others shall subscribe their Christned Names, or the initial letter thereof with their Surnames, and may, if they please adject the Designations of their Lands, prefixing the word OF to the saids Designations. And the *Lyon King at Armes* and his Brethren, are required to be carefull of informing themselves of the contraveeners hereof, and that they acquaint His Majesties Council therewith, who are hereby impowered to punish them as persons disobedient to, and contraveeners of, the Law. It is likeways hereby Declared, that the Lyon and his Brethren Heraulds are Judges in all such causes, concerning the Malversation of Messengers in their office, and are to enjoy all other priviledges belonging to their Office, which are secured to them by the Laws of this Kingdom, and according to former practice.<sup>292</sup>

#### 58. *ACT against Profanenesse.*

OUR Sovereign Lord, considering the many and great violations of the Law of GOD, and of the Laws of this Kingdom, established by His Majesty and his Royal Predecessors, against cursing, swearing, drunkennesse, fornication and uncleannesse, profanation of the Lords-day, mocking or reproaching of Religion and the exercises thereof; Which are prohibit by several Acts of Parliament, under

<sup>292</sup> This is one of several statutes which regulate the powers of the Lord Lyon. See note annexed to 1587, ch. 30, and Ersk. b. i. tit. iv. § 33.



diverse pecunial mulcts and penalties; and especially by the twenty act of the twenty two Parliament of King *James* the sixth, entituled, *Act anent the punishment of Drunkards*; And by the eighteenth Act of the first Session of His Majesties first Parliament, entituled, *Act for the due observation of the Sabbathday*; And the nineteenth Act thereof entituled, *Act against swearing and excessive drinking*; And by the thirty eight Act of that same Session of Parliament, containing instructions to the Justices of Peace: Doth, with advice of his Estates of Parliament, Statute and Ordain, that the several pains and fines appointed by the said Acts, be inflicted on, and exacted off the respective transgressors; And for that effect, it is hereby Statute and Ordained, that besides the exercise of Church-discipline, according to the Laws and practice used in this Church, in every Paroch within any Royal Burgh, or wherein any of His Majesties Privy Council or Lords of Session, Sheriff, Lord, or Bailiff of Regality or their Deputes, or Commissaries, have their residence or keep Courts, that the saids Councillors or Lords of Session, Magistrats of such Burghs, the Sheriffs and the Lords and Bailiffs of Regalities or their Deputes, the Commissaries or any Justice of Peace, They or any one or more of them, execute or cause execute the saids Laws, against such delinquents in the several Paroches where they reside, as shall be dilated to them by the Kirk-Sessions, or other Church-Judicatories. Providing alwayes, Likeas it is hereby provided, that the Minister and Kirk-Session, with the Heretors of each Paroch, or such of them as upon publick intimation by the Minister from the Pulpit, upon eight dayes warning, shall meet with the Minister, and his assistants in discipline, have the nomination of a Collector, who is to receive and count for the fines so imposed; Excepting to the Royal-Burghs the nomination of their Collectors, who have been accustomed so to nominate, they alwayes being accountable as other Collectors, for the uses after-specified: And where there be any Paroches, in which there is none of saids above-named persons in Authority resident, the Minister and Kirk-Session and Heretors of the Paroch, or Major part of them, who shall convene upon publick intimation by the Minister upon eight dayes warning, shall nominate so often as they see cause, a person resident within the Paroch, whom they find most fit for executing of the saids Statutes, and shall under their hand, offer the persons so chosen to the Sheriffs, Lords and Bailiffs of Regalities, Stewarts, Commissaries, having the ordinary Jurisdiction of that place, who are hereby authorized to give Commission and Deputation to the persons so chosen for conveneing the persons transgressors of the foresaid Statutes, and to judge in them according to Law: And it is hereby Declared, that all execution shall pass upon the Decreets and Sentences of the saids Judges and Commissioners, as do or may pass upon the Decreets or Sentences of Sheriffs, Bailiffs of Royalty or Regality, for executing of the saids Statutes, conform to the tenor thereof in all points. With Power to the said Minister, Kirk-Session and Heretors of each Paroch convened in manner foresaid, to modifie and appoint such part and portion of the sums arising by the said Decreets, to the Collectors nominat by them for their services, as they shall find just, according to their pains and diligence. And it is hereby Declared, that the remainder of the saids sums shall belong to, and be made use of, for the poor of each Paroch *respective*, in manner following, *viz.* The one half thereof for the use of the poor of each Paroch to be sent to the Correction-houses, for being bred to lawful Trades, conform to an Act of Parliament, made in this Session of Parliament; And for which, the Collector shall be countable to the Heretors of each Paroch, and shall deliver to them Receipts from the Masters of the Correction-houses of the one half of the saids sums, toward the allowance of the said poor people, appointed to be payed out of each Paroch by the said Act: and the other

half of the saids fines shall belong to the poor of each Paroch *respective*, who by the said Act, by reason of their age and infirmity, are appointed to be entertained within each Paroch by the Contributions at the Paroch-Kirk, and for which the saids Collectors are to be countable to the Minister and Kirk-Session of each Paroch, or to the Elders during the Vacancy; and to be applyed be them for the use of the poor, as they shall see cause.<sup>293</sup>

APUD EDINBURGH,

XXVIII DIE JULII, A.D. M.DC.LXXXI.

PARLT. 3.

5. *ACT Concerning probative Witnesses in Writs and Executions.*

OUR SOVERAIGNE LORD Considering that by the Custom introduced when writing was not so ordinary, Witnesses insert in writs, although not subscribing, are probative Witnesses, and by their forgetfulness may easily disown their being witnesses. FOR REMEED whereof, His Majestie with advice and consent of the Estates of Parliament DOETH ENACT and DECLARE, That only subscribing Witnesses in writs to be subscribed by any partie hereafter, shall be probative, and not the Witnesses insert not subscribing; And that all such writs to be subscribed hereafter, wherein the Writer, & Witnesses are not designed, shall be null, and are not supplyable by condescending upon the Writer, or the designation of the Writer and Witnesses. AND it is farther STATUTE & DECLARED, That no witness shall subscribe as Witness to any parties subscription, unless he then know that party, and saw him subscribe, or saw, or heard him give warrant to a Nottar, or Nottars to subscribe for him, and in evidence thereof touch the Nottar's pen, or that the party did at the time of the Witnesses subscribing acknowledge his subscription; Otherwise the saids Witnesses shall be repute and punished, as accessorie to forgerie. AND SEING writting is now so ordinary, HIS MAJESTIE with consent foresaid DOETH ENACT and DECLARE, that no Witnesses but subscribing Witnesses shall be probative in instruments of Seising, Instruments of Resignation *ad remanentiam*, instruments of intimation of assignations, translations, or retro-cessions to bands, contracts, or other writs, which shall happen to be subscribed in any time hereafter: AND THAT none but subscribing Witnesses shall be probative in Executions of Messengers, of Inhibitions, of Interdictions, Hornings, or arrestments; And that no Execution whatsoever to be given hereafter, shall be sufficient to inferr interruption of prescription in Real rights, unless the same be done, before Witnesses present at the doing thereof subscribing: And that in all the saids caices the Witnesses be designed in the body of the Write Instrument, or Execution respective, otherwise the same shall be null and void, and make no faith in Judgement, nor out-with.<sup>294</sup>

<sup>293</sup> In reference to this act, see Jobson and Hay v. Lambert, 29th November 1828, 7 S. & D. 83.

<sup>294</sup> This important statute which, it is believed, was framed by Lord Stair, perfected the law in regard to the subscription of deeds. The previous statutes were 1540, cap. 37, 1579, cap. 18, 1593, cap. 25, 1672, ch. 47. In reference to this statute, see Earl of Fife against Duff, 22d December 1825, 4 S. & D., and the appeal case of Duff against Earl of Fife, decided in House of Lords, 22d May 1826, Wilson & Shaw's Reports, vol. ii. p. 166. See also Erskine, b. iii. tit. ii. § 13.

11. *ACT Against personal Protections.*

OUR SOVERAIGNE LORD, and Estates of Parliament, DOE Ratifie, and approve all former Laws, and Statutes, made against Supersedes, and Protections; And to the end the same may be made yet more effectual, THEY Discharge the Lords of His Majestie's Privy Council, Session, and Exchequer, and Commissioners of Justiciary, to grant Protections, Licences, or Supersedes, Certifying such as shall grant the same, that they shall be lyable for the debt, upon which execution is stopped by the said Protection. And to the end such as are accessory may be clearly discovered, They ordain that all Protections, Supersedes, and Licences, shall be signed by such as grant them; And they declare that their signing thereof shall prove against them their voting thereto, and shall make all who signe them, whether the President of the Court, or others as lyable, as if they had become Cautioners for the said debt: And ordains that these Protections be recorded in the Books of the Court, which granted the Protection, and that extracts thereof under the Clerks hand, shall make faith against the granter. IT IS ALWAIES hereby DECLARED, that it shall be free to the Lords of His Majesties Privy Council, Session, and Exchequer, and the Commissioners of Justiciary, to grant Protections to such as are cited, charged, or required by Law to compear before them, for such few dayes, as they may come and give their appearance, and during their necessary stay, and some few dayes for their return, not exceeding a Moneth in all: The parties who require witnesses to be cited, or their Tuteurs and Curatours, if the saids parties be Minors, giving their Oaths of credulity, or subscribing a certificat under their hand upon Oath, that these who are cited by them to be Witnesses, are material Witnesses, which Protections shall bear the cause for which they are granted. AND LASTLY, It is hereby DECLARED, that it shall not only be Lawful to put the Laws in Execution, notwithstanding of Protections and Licences, granted contrary to this and former Laws, but that if any Messenger, or Magistrate refuse to concur, they shall be lyable in payment of the debt; And that the Lyon shall be likewise lyable, if he refuse to deprive the Messenger who refuses to execute the Law, upon pretence of any such Protection, Licence, or Supersedere.<sup>295</sup>

12. *ACT Concerning Wives Terces.*

OUR SOVERAIGNE LORD Considering that sometimes through the ignorance, and inadvertencie of some Writers and Nottars, Clauses are insert in contracts of Marriage, containing provisions by Husbands in favours of their Wives, without mentioning the terce that is due to her by Law, or expressing the provision to be granted in satisfaction of the terce; whereby occasion is given to Relicts to claime a terce out of their Husbands estates by and attour the provision conceived in their favours, contrary to the meaning and intention of the parties contracters. FOR REMEED whereof, the Kings Majesty, with advice and consent of the Estates of Parliament, STATUTES and ORDAINS, That in time coming where there shall be a particular provision, granted by an Husband in favours of his Wife, either in a contract of Marriage, or some other writ, before or

<sup>295</sup> This act was virtually ratified by 1698, ch. 41, and is still in force, except as to protections granted under the bankrupt act. The oath of the petitioner's agent is, in practice, sustained in place of a certificate on oath by the party himself. See Jurid. Styles, vol. iii. p. 892-3, and note 1 in the latter of these two pages.

after the marriage ; That the Wife shall be thereby seclused from a terce out of any lands or annual-rents belonging to her Husband, unless it be expressly provided in the contract of Marriage, or other Writ containing the said provision, that the Wife shall have right to a terce, by and attour the particular provision, conceived in her favours : But prejudice alwaies to the Lords of Session, to determine as to Contracts of Marriage, or provisions already made, according to the former Law and Custom.<sup>296</sup>

13. *ACT Concerning the Registration of Seisings, and Reversions of Tenements within Burgh.*

OUR SOVERAIGNE LORD, Considering the great security that this Kingdom enjoys by the publick Register of Seisings, and Reversions, conform to the sixteenth Act of the 22. Parliament of King *James* the Sixth, holden in Anno 1617. And that there is fully the like reason and benefite, that the foresaid Statute should extend to the whole Kingdom, as well to Burgh, as Landward. THEREFORE His Majesty, with consent of his Estates of Parliament, STATUTES and ORDAINS, That in time coming, all Instruments of Seising of Tenements within Burghs Royal, or Liberties, or freedoms thereof holding in Burghage, and all Reversions, Regresses, Bands, or Writs, for making Reversions, or Regresses, Assignations thereto, discharges thereof, Renunciations of Woodsets, and Grants of Redemption of the saids Tenements within Burgh, or the liberties, or freedoms thereof holding Burghage, shall be insert in the Town Clerks Books of the severall Burghs respective, within Threescore dayes after the date of the same, excepting reversions incorporat in the body of the right ; And that the Town Clerk shall keep a severall book therefore, depending only upon the Magistrats of the Burgh, without necessity of any warrand from the Clerk of Register, and minut Books of the same, to be quarterly compared and signed, by the Provost and Bailies of the severall Burghs. IT IS ALWAIES DECLARED, that it shall not be necessary, to insert any Bands, or Writs, for making of reversions or regresses, unless Seisings pass in favours of the parties makers of the saids Bands, and Writs : IN THE WHICH CASE, It is ordained that the same shall be insert within sixty dayes after the date of the Seising, the extract out of the which Register shall make faith in all cases, except where the Writs so insert are offered, to be improven : And if it shall happen any of the saids Writs which are appointed to be insert as said is, not to be duely insert, within the said space of Sixty dayes : THEN and in that case, His Majesty, with advice and consent forsaid, DECERNES the same to make no faith in Judgment, be way of action, or exception, in prejudice of a Third partie, who hath acquired a perfect and Lawful right to the saids Tenements, But prejudice alwaies to them to use the saids Writs against the parties makers thereof their Heirs and Successours. AND it is hereby DECLARED, that there shall be nothing payed to the Town Clerks for registration of the saids Seisings, but for any posteriour extracts, they shall have the halfe of the rates prescribed by the Act of Parliament for extracts out of the Registers of Seisings in the particular Shires. And for registrating in the Town's Books, of Reversions, Assignations thereto, or discharge thereof, Renunciations, and Grants of Redemption of Wodsets, which were not in use to be registrat before in the Towns Books, That they shall have the halfe of the rates prescribed by the Act of Parliament, for registration and extracting the same, as said is.<sup>297</sup>

<sup>296</sup> In reference to this act, see Ersk. b. ii. tit. ix. § 45, *et seq.*

<sup>297</sup> By 49th Geo. III. ch. 42, it is enacted that the books to be used for the regis-

79. *ACT Concerning Declinatours.*

OUR SOVERAIGNE LORD, Considering that by the 112. Act 14. Parliament of King *James* the Sixth, It is expressly Statute and Ordained, that no Senatour of the Colledge of Justice, Ordinary, or Extra-ordinary, shall sit or vote in the causes of their Father, Brother, and Son. DOETH with advice and consent of His Estates of Parliament, STATUTE and ORDAIN, That this declinatour shall for the future be farther extended to degrees of affinitie, as well as consanguinity, So that in all time coming, No Senatour of the Colledge of Justice, Ordinary, or Extra-ordinary, shall sit or vote in causes, where the pursuer, or Defender, is either Father, Brother, or Son in Law to him; And also that he shall not sit, or vote, in any cause, where he is Uncle, or Nephew, to the pursuer, or Defender. AND it is hereby declared, That this Act shall be extended to the Lords of Privy Council, and Exchequer, and the Commissioners of the Justiciary, and to all other Judges and Judicatures in the Kingdom, who may be declined where they are related to the party Pursuer, or Defender, in the degrees foresaids.<sup>208</sup>

82. *ACT Concerning the Jurisdiction of the Admiral Court.*

OUR SOVERAIGNE LORD, Considering that the clearing and establishing the Jurisdiction of the High Admiral of this Kingdom, will greatly tend to the advancement, and encouragement of Trade, and Navigation. THEREFORE His Majesty, with advice and consent of the Estates of Parliament, DOETH Ratify and approve the 15. Act of the 20. Parliament of King *James* the Sixth, in the whole Heads, Clauses, and Articles of the same, And Decerns, and Declares, the High-Court of Admiralty to be a Sovereigne Judicature in itself, and of it's own nature to Import summar execution. And STATUTES and DECLARES, That the said High Admiral, as he is His Majesties Lieve-tenant, and Justice General upon the Seas, and in all Ports, Harbours, or Creeks of the same, and upon Fresh waters, or Navigable Rivers below the first bridges, or within the flood marks, so far as the same does, or can at any time extend; So the said High Admiral hath the sole Priviledge and Jurisdiction, in all Maritim and Sea-faring causes, forreign and domestick, whether civil or oriminal whatsoever within this Realm, and over all persons as they are concerned in the same. And Prohibits, and Discharges all other Judges to meddle with the decision of any of the saids causes in the first instance, except the Great Admiral, and his Deputs allennarly. And STATUTES, ORDAINS and DECLARES, that it is the Priviledge of the said High Admiral, to cause parties become enacted, and find Caution, not only for compearance, but for performance, of the Acts and Sentences of his Court, and that he may punish all breakers of his arrestments, and resisters of his Officers.

tration of Sasines within burgh must be previously marked and issued by the Lord Clerk Register or his Deputies. It is also enacted that the Chief Magistrates of royal burghs shall transmit a report, in November, every year to the Commissioners of Justiciary at Edinburgh, who are empowered to make orders, and direct inquiries in the matter; and the Clerks of Justiciary are ordered to transmit such report, with a certified copy of such orders, to the Lord Clerk Register.

The charges for registration in burgh records are now regulated by A. S. 10th July 1811. In reference to the present act otherwise, see Erakine, b. ii. tit. iii. § 41.

<sup>208</sup> The act here referred to is 1694, ch. 22, which see. See also A. S. 16th February 1816, and Erak. b. i. tit. ii. § 26.

in the Execution of his precepts, and apply the fines, and amerciaments to his own use, conform to the Laws of the Kingdom. And farther STATUTS and DECLARES, that the High Court of Admiralty is a supreme Court, and that the Decrees and Acts of all other Inferiour Courts of Admiralty, are subject to the review, and reduction, of the said High Court of Admiralty. AND for the more ready and quick dispatch of Justice, in Maritim, and Sea-faring causes, forreign and domestick, whether Civil or Criminal within this Realm, and over all persons in so far as they are concerned in the same, both to Natives and Strangers, OUR SOVERAIGNE LORD with advice and consent foresaid Prohibits and Discharges all Advocations in the foressaid causes, from the said Court of Admiralty to the Lords of Session, or any other Judges whatsoever in all time coming, and that no suspension or other stop to the Execution of the Decrees, or Acts, of the said Court of Admiralty, be past be the Lords of Session, at any time hereafter, except by the whole Lords, in *presentia*, in time of Session, and by three of the saids Lords the time of Vacance met together to that effect: And that if any suspensions, or stops shall happen to be past in manner foresaid, the same be summarily discussed upon a Bill, and be Priviledged and exeemed from the ordinary course of the Roll: And if upon discussing thereof, the same shall be found to have been unjustly, and maliciously raised, That the said High Court of Admiralty, may upon the Application made by the Parties concerned, Modifie, and Decern the Damages they have sustained by the saids suspensions, and stops of execution of their Acts and Decrees, attour the expences of plea before the Lords of Session, which is to be modified by the saids Lords of Session. AS ALSO His Majesty with advice and consent foresaid, STATUTES and ORDAINS, That it shall be lawful and competent to the said Court of Admiralty, to review their own Decrees and Sentences, if there be just occasion for the same. And His Majesty with advice and consent foresaid DECERNS and DECLARES, That it is the sole Right and Priviledge of the High Admiral and his Deputs, the Judges of the High Court of Admiralty, To grant passes, and safe conducts to all Ships; And Inhibits and Discharges, all others to grant the same, as they will be answerable upon their highest peril. And his Majesty with advice and consent foresaid Casces, Annuls, and Rescinds, all and whatsoever Laws, Acts of Parliament, or Customs, contrary to, or any wayes inconsistent with this present Act.<sup>299</sup>

### 83. *ACT Concerning the Sale of Bankrupts Lands.*

OUR SOVERAIGNE LORD, Considering, that when the Estates and Lands of Bankrupts are affected with Adjudications, Comprisings, and other real Rights, exceeding their value, It oftimes fols out that the Creditors do not agree

<sup>299</sup> This is one of the most important statutes relating to the Court of Admiralty. By 1st Will. IV. cap. 69, § 21, this Court was abolished, and it was enacted, that "hereafter the Court of Session shall hold and exercise original jurisdiction in all maritime civil causes and proceedings, of the same nature and extent, in all respects, as that held and exercised in regard to such causes by the High Court of Admiralty before the passing of this act; and all applications of a summary nature connected with such causes may be made to the Lord Ordinary on the bills, provided always that all such causes, not exceeding the value of L.25 Sterling, shall be instituted and carried on, in the first instance, before an inferior court, in the manner directed, and with the exceptions specified in an act of the Parliament of Scotland passed in the year 1672, entitled *an act concerning the regulation of the judicataries*." See also sections 22 to 28 inclusive, of said act of Will. IV. and i. tit. iii. § 33, *et seq.*

to sell the Lands, whereby such as have small sums upon such securities, cannot command any part thereof, and such Estates do oftentimes become ineffectual to many Creditors. THEREFORE, His Majesty, with consent of His Estates of Parliament, DOTH authorize, and impower the Lords of the Session (upon a Process at the instance of any Creditor having a real Right) To cognosce, and try the value of such Estates, where the Heretor is notoriously Bankrupt, and the Creditors in possession of the Estate, and to value the same according to the true worth thereof, in its Rents, Casualties, Rights, and Holdings, according to the use and custom of the Country where the Lands ly, And to Commissionat persons to sell these lands, and Estate, or any part thereof, at the saids rates, or more, as can be had for the same, with consent of the debtor, where there is a legal reversion competent to him, and without his consent where there is no legal: And ordains the said sale to be by a publick Roup, not being under the rate, and price, appointed by the Lords of Session; and that the Roup be made after publick intimation at the Mercat-cross of the head Burgh of the Shire where the Lands lye, and at the head Burgh of the Bailyary, Stewartry, or Regality, if they ly within the same, and at the Paroch Kirk where the lands ly, and at six other adjacent Paroch Kirks, (to be named by the Lords of Session) at the dissolving of the Congregation, on a Sunday after the forenoon's Sermon, by letters of intimation under the Signet, upon the Lords deliverance: Which letters shall specially express the time, and place of the Roup; And the Creditours having real rights and in possession shall be specially cited, upon Twenty one dayes, and all other persons concerned, whether within or without the Kingdom, at the Mercat-cross of the head burgh of the Shire, Stewartry, or Regality, and at the Mercat-cross of *Edinburgh*, and Peer and Schoar of *Leith* upon sixty dayes, and a copy of the said intimation shall be affixed at all the places foresaids, expressing the lands to be Rouped, the price appointed by the Lords of Session, and the time and place of the Roup. Which alienation so made, and reported to the Lords, and by their warrand registrat in the Books of Council and Session, HIS MAJESTY, with consent foresaid, DECLARES, to be as effectual upon payment of the price, as if the same were made by the Debitor, and all the Apprisers, Adjudgers, or other Creditors, who are so cited, and have any rights affecting the saids Lands, and that a Signature shall pass thereupon in Exchequer, and a warrand for charging the Superior to enter the Purchaser, upon payment of a years rent, DECLARING alwaies that the price which shall be gotten for the saids Lands conform to the Roup shall be distribut by the Commissioners appointed to sell the Lands, or by the Purchaser of the same amongst the Creditours proportionally, according to their several sums, rights, and diligences, as they are, or shall be ordered, and found preferable by the saids Lords, whether the saids Creditors have compeared, or not.<sup>300</sup>

#### 85. *ACT Concerning the Oaths of Minors.*

OUR SOVERAIGNE LORD, and Estates of Parliament, taking to their serious consideration, the great abuses which may be committed against Minors, within twenty one years of Age compleat, by causing them subscribe Bonds of borrowed Money, Contracts of Alienation of their Lands, Dispositions, Discharges, and other Writs of Importance, and ratifie the same by Oath, swearing that they

<sup>300</sup> In reference to this act, which is altered and amended by 1690, ch. 49; 1695, ch. 8; 54th Geo. III., ch. 137, § 6, &c.; and A. S. to regulate the form of extracts, &c. 24th Dec. 1838; see Bell's Com., vol. ii. p. 250, *et seq.*

shall never come in the contrary, thereby depriving them of all the benefite of Revocation, Reduction, and Restitution in *Integrum*, allowed to them by the Laws of this Kingdom, where such Oaths are not made. IT IS THEREFORE Statute and Ordained, by the King's Majesty, with advice and consent of the saids Estates, That no such Oaths shall be exacted in time coming; And in case of Contravention, Declares the Contract to be void and null, and that no Execution shall pass thereupon, And Declares the Elicitor or Exacter of the Oath to be Infamous: And it is hereby declared, that it shall be competent to any Person related to the Minor, to obtain the saids Writs to be declared void and null, be way of Action, exception, or reply.<sup>301</sup>

#### 86. ACT Concerning Bills of Exchange.

OUR SOVERAIGNE LORD, Considering how necessary it is for the flourishing of Trade, That Bills or Letters of exchange be duely payed and have ready Execution, conform to the Custom of other parts, DOETH THEREFORE, with advice and consent of his Estates of Parliament, STATUTE and ORDAIN, that in case of any Forraign Bill of Exchange, from or to this Realm duely protested for not acceptance, or for not payment, the said Protest having the Bill of Exchange, prefixed, shall be Registrable within six Moneths after the date of the said Bill, in case of non-acceptance, or after the falling due thereof, in case of non-payment, in the Books of Council and Session, or other competent Judicatures, at the instance of the person to whom the same is made payable, or his Order, either against the Drawer, or Indorser, in case of a protest for non acceptance, or against the Acceptor, in case of a protest for non-payment, to the effect it may have the Authority of the Judges thereof, interponed thereto, that Letters of Horning upon a simple charge of six dayes, and others executorials necessary may pass thereupon, for the whole sums contained in the Bill, as well Exchange, as Principal, in form as effeirs, sicklike, and in the same manner, as upon registrat Bonds, or Decrees of Registration, proceeding upon consent of Parties, PROVIDING alwayes, That if the saids Protests be not duly Registrat within six Moneths, in manner above provided, Then and in that case, the saids Bills and Protests, are not to have summar Execution, but only to be pursued by way of Ordinary Action, as accords. AND FARTHER, It is hereby STATUTE, and ENACTED, That the sums contained in all Bills of Exchange, bear Annual rent, in case of not acceptance from the date thereof, and in case of Acceptance, and not payment, from the day of their falling due, ay and while the payment thereof. AND FARTHER His Majesty with advice foresaid, hereby Declares, That notwithstanding of the foresaid Summar Execution provided to follow upon Bills of Exchange, for the sums therein contained, in manner above specified; Yet it shall be leasom to the party charger to pursue for the exchange, if not contained in the saids Bills, with re-exchange, damage, interest, and all expences, before the Ordinary Judge, or in case of Suspension, to eek the same to the Charge at the discussing of the said Suspension, To the effect, that the same may be liquidat, and Decreet given therefore, either against the party principal, or against him and his Cautioners, as accords.<sup>302. 303. 304</sup>

<sup>301</sup> In reference to this act, see Ersk., b. i. tit. vii. § 39.

<sup>302</sup> This act was extended to the case of inland bills and promissory notes, by 1696, ch. 38. See Thomson on Bills, p. 572, *et seq.*

By 1st and 2d Vict. ch. 114, Extracts of Registered Protests now contain a warrant to charge the obligants, thus superseding the necessity of raising letters of horning. That act also amends the law relating to personal diligence, arrestments, and poidings generally.



<sup>303</sup> The following act appears in Mr Thomson's edition of the Scots Acts, but not in his edition of 1681.

"XCV. ACT anent the Lyone King at Arms.

"OUR SOVERAIGNE LORD Considering that the Ninth Act of this Parliament doeth ordain the Lyon King at Armes to depose such Messingers at Armes as doe not put Captions in execution Notwithstanding of the Protections in manner exprest in the said Act, Therefore His Majesty with consent of his Estates of Parliament, Doeth Declare that the Lyon is and shall be sole Judge in the Case foresaid Any thing in the Contrair notwithstanding."

This is one of several statutes regarding the powers of the Lord Lyon. See note annexed to 1587, ch. 30, and Ersk., b. i. tit. iv. § 32.

<sup>304</sup> The following act appears in Mr Thomson's edition of the Scots Acts, but not in the edition of 1681.

"CXXXVII. RATIFICATION in favours of his Majesties Mr Smith Mason Wright and other Servants of their exemption from Taxations, &c.

"OUR SOVERAIGNE LORD And the Estates of this present Parliament Considering the diverse Acts of Parliament past in favours of his Majesties Servants viz. John Callendar his Majesties black smith and Lock smith, Alexander Reid his Majesties Goldsmith, Robert Mylne Mason, James Baine Wright, Andrew Cassie Sklatter, Andrew Forrester Bower, Alexander Home Talzeor, James Rae Barber, and John Mastertoun Glasier, for themselves And in name and behalfe of the remanent of his Majesties servants in their rex've Employments Conforme to their severall Gifts granted thereanent And particularlie the 275 Act of Parliament of the 15 Parl: of King James the Sext And also the severall and particular Gifts granted be his Majestie to his rex've Servants in their severall trades Artifices and employments within this Kingdome Conforme to their severall Grants past in their favours under His Majesties Privie Seale whereby His Majesties Servants are exeemed and declared free of all Stents, Taxations, Watchings, Wardings and uther Impositions whatsoever that Can be imposed upon them And it being necessar that the foresaids acts of Parliament should be revived And the saids Gifts Ratified and Approven And his Majesties Servants for their farder encouragement in their rex've trades should be liberat from any Impositions taxations Stents and uther Incumbrances whatsoever, which may hinder them in their rex've Stations to serve his Majestie in their particular Employments Therefore His Majestie and Estates of Parliament not only Revives the severall Acts of Parliament granted be his Majestie and his Royall Progenitors in favours of his Servants in their severall and rex've trades artifices and employments And particularly the said 275 Act of the 15 Parliament of King James the Sext But also ratified and approved and Confirmed And be thir presents Ratifies Approves and Confirms His said Servants their severall and particular Gifts granted to them under his Majesties Privie Seale of this Kingdome In the haill heads clauses and articles thereof Conceaved in their favours And Declares them and their successors in office to be exeemed and free of all Stents and Taxations, watchings wardings and uther Impositions whatsoever imposed or to be imposed hereafter And Declares That this present Ratification shall be extended to all his said Servants their particular Gifts And be als valid and sufficient to all intents and purposes as though everie particular Gift were herein insert and expressed verbatim with which generalitie His Majestie and Estates of Parliament be thir presents dispenses for ever And further they discharge all persones in publick trust or office to encroach upon or molest his saids Majesties Servants in the saids maters any maner of way in time comeing."

The acts here confirmed are 1592, ch. 75; 1594, ch. 35; and 1597, ch. 46. See these acts, and the note annexed to the first of them. See also *Magistrates of Edinburgh v. Marshall and Son*, 18th February 1830, 8 S. & D. 554.

ACTA PARLIAMENTORUM  
REGIS JACOBI SEPTIMI.

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APUD EDINBURGH,

XXIII DIE APRILIS A.D. M.DC.LXXXV.

14. *ACT explaining the nyynth act of the Parliament 1669 concerning Prescriptions.*

OUR SOVERAIGNE LORD Considering that at making of the nyynth act of the first Session of the second Parliament of King Charles the Second Concerning Prescriptions In that part of it Relating to actions proceeding upon warnings, Spulzies, Ejections arreistments or for Ministers Stipends and others forsaid, the cases that existed before that act were not taken into consideration Therfor His Majesty with consent of His Estates of Parliament Statuts and ordains that all such actions proceeding upon any diligence mentioned in that act already intended either before the said Act 1669 [or since] shall prescribe within fyve yeares after the Date of this act if they be not wakned within that time and all Actions to be raised heirafter upon the forsaid grounds shall prescryve in fyve yeares if they be not wakned within that time And his Majesty wills and Declares the forsaid nyynth act to stand in full force as to the rest of the Tenor thereof.<sup>305</sup>

15. *ACT explaining the tenth act of the Parliament 1669 anent Interruptions.*

OUR SOVERAIGNE LORD Considering that the clause concerning citations used for interruptions mentioned in the tenth act of the first Session of the Second Parliament of King Charles the Second Hath left the case of such citations before the said Act undetermined His Majesty therfor with consent of His Estates of Parliament Statuts and Ordains that all citations used for interruptions preceeding that act shall prescryve within Seven yeares after the Date of this act if they be not renewed within that time. And further Statuts and Ordains that in citations for interruptions As to the Rights of Lands and Waknings therof Copys of the citations shall be affixed on the most patent Door of the Paroch Church and that over and beside what is required by the said Act anent these executions.<sup>306</sup>

25. *ACT against Stealing of Dogs and Haulks.*

OUR SOVERAIGNE LORD And Estates of this present Parliament taking to their consideration the great prejudice and Inconveniencies That has and does dayly fall out Through the Stealing and keeping of Haulks and Dogs that has

<sup>305</sup> See note annexed to 1669, ch. 14, the act here referred to.

<sup>306</sup> This act is partly temporary. The act here referred to is 1669, ch. 15, which see, with note annexed thereto.

Strayed and Got away from their Rightfull owners by persons that has no right or interest to doe the same Does Statut and Ordain that whosoever hereafter shall Steal a haulk out of the Nest or arie or take a Collar from a Dogs neck or vervel from a haulk with the masters Name or Stile thereon shall be fyned in the sowm of fyve hundered Merks Scots And whosoever shall give away or Sell any haulk or Dog which is not his own shall be fined in the sowme of ane hundred pounds Scots As also That whosoever does Get a Dog Straying having the Collar above named or haulk with Bells or Vervels That has Got away from her or his Master and does take the said Haulk or Dog into his possession shall be oblidge within forty eight hours after the said Dog or haulk shall be so taken by him to send and book the same In the sheriff Clerk his books (where the wafe goods are booked) The Dog by the kind collar and Marks and the haulke by the kind and Vervells if it have any for which there shall be payed to the Sheriff clerk Six Shillings eight pennies Scots Which the owner of the haulk shall be oblidge to repay together with two Shillings Scots for each myle that the bearer shall be sent to the Sheriff clerk for booking of the said Dog or haulk And In case the Dog or haulk shall not be clamed by Letter or otherways by the just owner within Six months after it shall be so booked in the Sheriff Clerk of the Shyre where the Dog or Haulk shall be taken, his books; then and in that case the Dog or haulk shall belong and appertain in property to the possessor And the Ouner shall not be heard thereafter to clame the same and if the taker or keeper of any haulk or Dog shall failzie to cause book the same in maner above speit he shall pay the Sum of forty pound Scots of penalty to the owners if they shall pursue the same before any Judge competent.<sup>307</sup>

#### 26. *ACT concerning Tailzies.*

OUR SOVERAIGNE LORD with Advice and Consent of His Estates of Parliament Statuts and Declares That it shall be Lawfull to His Majesties Subjects to Tailzie their Lands and Estates and to Substitut aires in their Tailzies with such Provisions and Conditions as they shall think fitt and to affect the saids Tailzies with Irritant and Resolutive clauses wherby it shall not be Lawfull to the Aires of Tailzie to sell annalzie or Dispone the saids Lands or any part therof or Contract Debt or Due any other Deed whereby the samen may be appressed, adjudged or evicted from the others Substitute in the Tailzie or the Succession frustrat or interrupted Declaring all such deeds to be in themselves null and Void and that the next Air of Tailzie may immediatly upon the contravention pursue declarators Therof And Serve himself air to him who died last infest in the fee and did not contraveen, without necessity anyways to represent the Contraveener, It it allways Declared that such Tailzies shall only be allowed in which the forsaid Irritant and Resolutive clauses are insert in the Procuratorys of Resignation, Chartors precepts and instruments of Seasine, And the Original Tailzie once produced before the Lords of Session judicially who are hereby ordained to interpose their authority thereto and That a Record be made In a particular Register Book to be kept for that effect, Wherin Shall be Recorded the Names of the Maker of the Tailzie and of the aires of Tailzie and the Generall Designations of the Lordships and Barronies And The Provisions and Conditions contained in the Tailzie With the forsaid Irritant and Resolutive clauses Subjoyned therto, to remain in the said Register ad perpetuam Rei memoriam And for which Record Ther shall be payed to the Clerk of Register and his Deputs The same Deues as is payed for the Registration of Seasines And which Provisions and Irritant Clauses shall be

<sup>307</sup> In reference to the subject of this act, see Hume, vol. i. p. 81, *et seq.*

repeated In all the subsequent Conveyances of the said tailzied Estate to any of the aires of Tailzie and being so insert His Majesty with advice and consent for-said Declares the samen to be Reall and effectuell not only against the Contra-veeners and their aires but also against their creditors Comprysers adjudgers and other Singular Successors Whatsoever whither by Legall or conventionall titles. It is always hereby declared that if the saids Provisions and Irritant clauses shall not be repeated in the rights and conveyances whereby any of the aires of tailzie shall brook or enjoy the tailzied Estate the said Omission shall import a Contra-vention of the irritant and Resolutive clauses against the person and his aires who shall omitt to insert the same Whereby the said Estate shall ipso facto fall, accress and be devolved to the next air of Tailzie But shall not militat against Creditors and other Singular Successors who shall happen to have contracted bona fide with the persons who stood infest in the said Estate without the saids irritant and Resolutive clauses in the body of his Right. And it is further Declared that nothing in this Act shall prejudice His Majesty as to Confiscations or other fynes as the punishment of Crimes Or his Majesty Or any other Lawfull Superior of the Casualty of Superiority which may arise to them out of the tailzied Estate But which fynes and Casualties shall import no contravention of the Irritant Clause.<sup>308</sup>

35. *ACT and Commission for Plantation of Kirks and Valuation of Teinds.*

FORASMUCH As His Majesty's Father of ever blessed memory out of His Royall care and Zeale for the Reformed Religion within this Kingdom, and maintenance and provision of the ministry and Churches therof and the peace of the Kingdom and for preventing and settleing all Differences that did or might arise betuixt titulars and others having Right to teinds, And Heretors concerning the Leading and Drawing of their tiends, And immediatly after His attaining and Succeeding to the Crown, Gave furth and emitted His Royall Declaration anent the premisses, and the other particulars therein specified, and in pursuance of the Ends forsaids, diverse Laws and acts of Parliament were made in the Year of Our Lord 1633, His said Majesty being then present in his Royall Person, and since diverse acts of Parliament and Commissions have been made, given, and renewed to that purpose and particularly by the fifteenth act of the third Session of the Second Parliament of King Charles the Second, His Majestys umquhile Royall Brother, of ever blessed memory: And His Majesty being resolved, and desirous to prosecute so Good a Work for the universall good of His Subjects and especially for the encouragement of the Ministers of the Gospel. Therfor His Majesty with advice and Consent of his Estates of Parliament, Gives full power and Commission to His Majestys Officers of Estate for the time being, And to the Archbishop of S<sup>t</sup> Andrews The Archbishop of Glasgow The Bishop of Edinburgh The Bishop of Dunkeld, The Bishop of Galloway the Bishop of Isles, The Bishop of Brechin, The Bishop of Dumblane The Bishop of Aberdeen, The Duke of Hamilton The Marquess of Douglas The Earle of Erroll The Earle of Marischal The Earle of Marr, the Earle of Strathmore The Earle of Linlithgow The Earle of Southesk, The Earle of Tweeddale, The Earle of Balcarras The Lord President of the Session The Lord Pittmedden, The Lord Forret the Lord Reidfoord, The Lord Boyn, the Lord Drumcairn, The Lord Balcaskie, S<sup>r</sup> William Bruce of Kinross, S<sup>r</sup> George Lockhart of Carnwath S<sup>r</sup> Archbald Cockburn younger of Langtoun Hugh Wallace of Inglishtoun, S<sup>r</sup> George Drummond of Milnab Charles Murray of Hadden Alexander Miln of Carridden S<sup>r</sup> Alexander Bruce of Broomhall, S<sup>r</sup> Patrick Murray, James Johnston Provost of Glasgow, M<sup>r</sup> Robert Innice writter to the Signet

<sup>308</sup> This act is the foundation of the law of entails in Scotland.

S<sup>r</sup> George Skeen Provost of Aberdeen, James Fletcher burges of Aberdeen, John Dempster of Pitliver Or any eleven of them to be a Quorum, wherof tuo of every Estate to meet and convene at Edinburgh the day of yeares and such other place or places, times or dyets as they shall appoint, to value and cause be valued whatsoever tiends Great or Small Personage or Vicarage within this Kingdom which are yet unvalued, Declaring that where the Vicarage of any Paroch is a several benefice and title from the Personage, the same shall be severally valued to the effect the Titulars or Ministers serving the cure, having right to the said Viccarage be not frustrat of the true worth therof With power to the saids Commissioners or Quorum forsaid, to appoint Committees or Sub Committees of their own number, and to Grant Subcommissions, and to receive Reports from them and to approve or disapprove of the same as they shall find just, and to rectifie whatsoever valuations led, or to be led to the enorm prejudice of the Titulars or to the hurt and detriment of the Church, and prejudice of the ministers maintainance and provisions. Provyding allways Lykas it is hereby expressly provyded and declared That where valuations are lawfully led against all persons having interest and allowed by former Commissions, The same shall not be drawn in question, nor rectified upon pretence of enorm lesion at the instance of the Minister (not being titular) or at the instance of His Majestys Advocat in respect of His Majestys annuity, except it can be proven that Collusion was used betuixt the Titulars and Heretors, or betuixt the Procurator fiscall and the Heretors and titulars Which collusion is declared to be, when the valuations are led with the diminution of the third part of the just rent, Which Diminution shall be proven by the parties oath, and with power to the saids Commissioners or Quorum forsaid where Ministers are not already sufficiently provyded or have not Localitys already Assigned to them for their Stipends out of the tiends within the paroch where they serve the cure, In so far as the same will amount to according to the Quantities Proportions and Rules contained in the nynteenth Act of the Parliament 1633, to Modifie setle and appoint Constant Local Stipends to each minister out of the tiends of the paroch where they serve the cure, With power also to the saids Commissioners, to grant recompence by prorogation of Tacks to parties for all augmentations of Stipends which are granted since the year 1630 or shall be granted and that effeiring to the augmentations of Stipends which ar granted already, or to be granted as the saids Commissioners shall think fit. And Sicklike to Disjoyn too Large and Spacious Paroches, to cause erect and build new Churches, to annex and Dismember Churches as they shall think Convenient and to take order that every Heretor and Liferenter shall have the leading and buying of their own tiends, if they be willing according to the rules prescribed by the nynteenth act and Commission Granted by his Majesty with consent of His Estates of Parliament in anno 1633 And the acts of Parliament therin mentioned With power to determine all Questions concerning the prices of Tiends betuixt titulars and others having Right therto, and the Heretors, And to appoint such Securitys in favours of Titulars and others having right to tiends for their prices, to be granted to the Heretors and others lyable in payment of Valued Duties or buyers of the saids teinds, and in favours of the Ministers as to their maintainance, as the saids Commissioners shall think fitting according to the Rules set down in the said act 1633 And each Heretor whose tiends belongs to Titulars of Erection to have power and liberty to buy the tiends of His own Lands, whither valued or not within the space of three yeares after the date of this act: With this Declaration allways, that in case the impediment during the time forsaid flow from the titular by reason of His Minority, or other Inability In that case the heretor who offered to buy his own tiends within the space forsaid, shall have place so

#### 40. ACT anent Messengers Fees.

**49. ACT in favours of Planters and Inclosers of Ground.**

<sup>310</sup> In reference to this act, see *Black v. M'Lachlan*, 12th February 1833, 11 S. & D.

made in favours of Inclosers of Ground and Planters of trees and particularly the fourth and act Parliament first Charles the Second entituled Act for planting and enclosing of Ground and because the time prescryved in the said act is now elapsed they Statut and Ordain That the whole heads contained in the said act be observed for the Space of Nynteen yeares next to come Commencing from the date heirof And lykeways Ratifies and approves the seventeenth Act Parliament Second Charles the Second entituled Act for enclosing of Ground and Ordaines the same to be observed in all time coming. And further Statuts and Ordaines that hereafter no person shall cut break or pull up any tree or piel the bark of any tree under the pain of ten pound Scots for each tree within ten yeares old and tuentie pound Scots for each tree that is above the said age of ten yeares And that the havers or users of the timber of any tree that shall be so cut broken or pulled up shall be liable to the same penalty except he can produce the person from whom he got it and if the person that shall be so convicted be not able to pay the fine then he shall be decerned to work a day for each half merk contained in the said fine to the heretor whose planting shall be so cut or broken As lykways Statuts and Ordains that no person shall Break down or fill up any Ditch hedge or Dyke whereby Ground is inclosed and shall not leap or suffer their horse Nolt or sheep to goe over any ditch hedge or dyke under the pain of ten pounds Scots toties quoties the half wherof to be applyed to the heretor and the other half for repairing and mending of Bridges and high ways within the paroch at the sight of the Sheriff Stewart or Justices of Peace before whom the Contraveeners shall be pursued.<sup>311</sup>

56. *ACT in favours of the Inhabitants of Orkney and Zetland.*

OUR SOVERAIGNE LORD Considering the great distance of the Islands of Orkney and Zetland from the town of Edinburgh, the ordinary place of Justice And the Uncertainty of passage by Sea and the many fresh waters and other ferries in the way by Land, Doth with advice and consent of His Estates of Parliament Statut and Ordain that all Summons to be inteped against the Inhabitants of Orkney and Zetland before the Lords of Privy Council the Lords of Session and before the Commissioners of Justiciary, and Letters of horning and Lawborrows upon their Decreets Or by their warrand Shall be execute in time coming upon forty days, but prejudice allways of Letters to be raised upon writts Registered of consent of parties, where, by the clause of Registration, the party consents that execution should pass on a shorter time.<sup>312</sup>

APUD EDINBURGH,

XXIX DIE APRILIS, A.D. M.DC.LXXXVI.

4. *ACT ordaining Interlocutors to be subscribed by the Judges.*

OUR SOVERAIGNE LORD with advice and Consent of the Estates of Parliament Statuts and ordaines That from and after the first of November next all interlocutors pronounced by the Lords of Councill and Session and all other Judges

<sup>311</sup> The penalties of transgression are now much heavier than those here mentioned.

<sup>312</sup> So far as summonses before the Court of Session are concerned, this act is confirmed by 6th Geo. IV., ch. 120, § 53.

within the Kingdome shall be signed by the President of the Court or the Judge Pronouncer thereof And his Majesty with advice foresaid, prohibites and discharges the Clerks upon ther perill to extract any acts or decreets unless the interloquitors, which are the warrands thereof, be signed as said is, declareing hereby the extracts which shall be given out otherways to be void and null.

5. *ACT ordaining all executions to be subscribed by the witnesses without necessity of stamping.*

OUR SOVERAIGNE LORD with advice and Consent of his Estates of Parliament Statuts and ordaines That in tyme coming all Citations befor the Lords of Session and Citations befor any other Judges Civil or Criminall which formerly by Law or custome used to be in writt, and all executions of letters of horning inhibition and others whatsoever be subscribed by the executor therof and the witnesses therto: Otherways to be null and void And that the same shall not be quarrellable for the want of stamping any Law or Practique to the contrar Notwithstanding.<sup>313</sup>

13. *ADDITIONAL Act anent High-ways and Bridges.*

OUR SOVERAIGNE LORD with advice and Consent of the Estates of Parliament Ratifies and approves the sixteenth act of the first Session of the Second Parliament of King Charles the second of blessed memory entituled Act for Repairing of high ways and bridges and the nynth act of the second session of the same Parliament And ordaines the same to be duly observed in tyme comeing And for the more effectual prosecution of these acts His Majesty with advice foresaid doeth authorize and require the Commissioners for his Majesties supply in the severall shyres to meet with the Justices of Peace and act in the same maner as they are warrantred to doe by the foresaid acts with pouer to them at their first meeting to choice their oun Clerk And declares that any five of the wholl number shall be a quorum Excepting the shyres of Clackmanan, Kinross and Cromarty wherein thrie to be a quorum And ordaines the first dyet of their meeting for this year to be the last tuesday of June next and that the Sherif of the shyre or his depute cause intimat that dyet And the first dyet of meeting yearly thereafter at each Paroch Kirk upon the sunday befor under the paine of five hundred merks scots And in caice any of the Justices of Peace or Commissioners of supply residing within the shyre shall be absent the said last tuesday of June next or the first dyet of meeting yearly thereafter They shall be fyned by the Quorum mett in twenty merks scots for ilk days absence And in caice a Quorum of them shall not meet the sherif or his deput is hereby empowered to fyne each of the absents in twenty merks scots, which fynes shall be applyed for the Reparation of the high ways and bridges And whereas by the forsaid act in the year 1669 the tyme for the inhabitants to worke at the Reparation of high ways is appoynted not to exceed sex days yearly the first thrie years and four days yearly thereafter His Majesty in regaird of the present Condition of the high ways and bridges Does with advice forsaid ordaine that these working days shall be sex yearly for the space of five years from and after the last tuesday of June next, and seeing it falls out

<sup>313</sup> 1st, By 9th Geo. IV., ch. 29, only one witness is required in citations before the criminal court. 2d, By 1st and 2d Vict., ch. 119, § 23, only one witness is required in citations before Sheriff courts. 3d, By 1st and 2d Vict., ch. 114, § 32, it is enacted that all citations and executions therein mentioned, with the exception of poindings, shall only require one witness: 4th, By 2d and 3d Vict., ch. 41, § 138, all services or citations under that act may be, by a competent officer, without witnesses.



sometymes that bridges and ferries are upon the confines of tuo shyres And it being just that both shyres in that caice should be burthened with the expence of reparation His Majesty with advice forsaide doeth ordaine the Justices of Peace and Commissioners of supply in both shyres to meet and adjust the expence of the said reparation proportionally according to the re~ive valuations of these shyres And that the Sherifs of these shyres or their deputs Conveen them and in caice they do not meet Grants warrand for directing general Letters to charge them to that effect And his Ma<sup>ty</sup> with advice forsaide declares that the several shyres and burghs shall be holden to repaire the present standing bridges within their re~ive bounds and being repaired to uphold the same and if they suffer them to fall His Ma<sup>ties</sup> Privie Council is hereby empowered to fyne them in alse much as will repair or rebuild these bridges, And it is hereby ordained that where Customes are Collected at bridges or Calseys the same shall be employed in the first place for Repairing these bridges and Calseys.<sup>314</sup>

21. *ACT for Winter herding.*

OUR SOVERAIGNE LORD Considering the prejudice and damage which the Lieges doe sustaine in their planting and inclosures through the not herding of nolt sheep and other bestial in the winter tyme whereby the young trees and hedges are eaten and destroyed Doeth with advice and Consent of his Estates of Parliament Statute and ordaine that all heretors liferenters tenents Cotters and other possessors of Lands or houses shall Cause herd their horses nolt sheep suynes and goats the wholl year alse weell in winter as in summer And in the night tyme shall Cause keep the same in houses folds or inclosures soe as they may not eat or destroy their nighbours ground woods hedges or planting Certifieing such as Contraveen they shall be lyable to pay halfe a merk toties quoties for ilke beast they shall have goeing on their nighbours ground by and attour the damage done to the grass or planting And Declares that it shall be lawfull to the heretor or possessor of the ground to detaine the said beasts untill he be payed of the said halfe merk for ilke beast found upon his ground and of his expences in keeping of the same, And this but prejudice of any former acts of Parliament made against destroyers of planting and inclosures.<sup>315</sup>

29. *ACT for writeing Sasines be way of book.*

OUR SOVERAIGNE LORD takeing into his Consideration That Seasinge doe extend to great length by reasone of inserting and repeating of the wholl provisions of the Chartor therein Therfor his Majesty with advice and Consent of his Estates of Parliament for the more easy and commodious perusal th<sup>of</sup> Statuts and Ordaines that it shall be lafull for Pairties if they think fitt to cause wreat & extend th<sup>r</sup> sasings by way of book, The attestation of the notar Condescending upon the number of the leaves in the book, and each leafe being signed by the notar and witnesses to the giving of the seasing And Ratifies all seasins already written by way of book by warrand of his Ma<sup>ties</sup> Privie Councill.

30. *ACT appoynting the Publication of the testimonies of witnesses.*

OUR SOVERAIGNE LORD Considering how much it does import & Concerne the good and interest of his Ma<sup>ties</sup> Lieges and the due administration of Justice that witnesses be distinctly and fully examined and ther depositions written

<sup>314</sup> See note annexed to 1669, ch. 37.

<sup>315</sup> In reference to this act, see art. "Winter Herding" in Bell's Dict. and Dig., and authorities there referred to.

in plain and clear words as they are given Therfor his Majesty with Advice and Consent of the Estates of Parliament Statuts and Ordaines that in all processes presently depending or to be intended befor the Lords of Privy Council Lords of Session and all other Judges within this Kingdome, the witnesses who are made use of and adduced th<sup>r</sup>in shall be examined in presence of the Pairties or their advocats They being present at the dyets of examination And th<sup>t</sup> th<sup>r</sup> be publication of the testimonies of the witnesses in the Clerks hands allowed to the Pairties Gratis befor adviseing to the effect Pairties may have Copies th<sup>r</sup>of If they think fitt Any Law or act of Parliament Custome or useage to the Contrar notwithstanding.<sup>316</sup>

### 33. *ACT anent the Registration of Sasines & Reversions.*

OUR SOVEREIGNE LORD Considering That where Sasines and other wryts and diligences appoynted to be registrat are duely presented to the keepers of Registers, It is their duety to Cause duely and lafully registrat the same for the security of the Pairty and intimation of the Lieges Therfor his Majesty with advice and Consent of his Estates of Parliament Statuts and ordaines That where sasines and other wreats are presented to the Keepers of Registers, and delivered back to the Pairty bearing a record and attestation under their hand that the same are registrat It shall make the samen sufficient and valide for the security of the Pairty, albeit by the omission or negligence of the keeper of the Register or his deputs they should not be found booked or insert in the Register And to the effect th<sup>t</sup> all deputs intrusted with the Care and keeping of the Registers may faithfully doe and execute th<sup>r</sup> office His Ma<sup>t</sup>ie with advice and Consent forsaid Statutes and ordaines That in caice by their omission or negligence any wreats presented to them and marked with their hands to be registrat shall not be found booked and insert in the Register The sds deputs guilty of such omission and negligence shall be punishable as forgerers of the publick Registers and records and shall be lyable in damage and prejudice to any pairtie who shall be prejudged by the said omission or negligence And his Ma<sup>t</sup>ie with advice forsaid Statutes ordaines and declares that thir p<sup>r</sup>nts shall no ways derogat from the Sexteinth act of the 22 Par : K : J : the 6<sup>th</sup> entituled Act anent the Registration of Reversions Sasines and other wryts which shall remaine in its full force and strength in all poynts as befor the makeing of this present act.<sup>317</sup>

### 34. *ACT and Commission for plantation of Kirks and Valuation of Teynds.*

FORASMUCH as his Ma<sup>t</sup>ies father of ever blissed memory out of his Royall Care and Zeall for the Reformed Religion within this Kingdom and the maintenance and provision of the ministry and Churches thereof and the Peace of the Kingdome and for preventing and settling all differences that did or might arise betuixt Titulars and others having right to teynds and heretors Concerning the leading and drawing of their teynds, And immediatly after his attaining and succeeding to the Croun gave furth and emitted his Royall declaration anent the premisses and the other particulars th<sup>r</sup>in specified And in pursueance of the ends forsaid divers Lawes and acts of Parliament wer made in the year of our Lord 1633 His said Ma<sup>t</sup>ie being then present in his Royall person And since diverse acts of Parliament and Commissions have been made given and renewed to that purpose and particularly by the 15<sup>th</sup> act of the 3<sup>d</sup> session of the second Parl : K : Ch : the

<sup>316</sup> See *Brown v. Heritors of Kilberry*, 1st Feb. 1825, 3 S. & D., and *Ersk. b. iv. tit. ii. § 31.*

<sup>317</sup> This act was partly repealed by 1696, ch. 18, which see.

2<sup>d</sup> his Ma<sup>ties</sup> umqu<sup>ll</sup> Royall brother of ever blisshed memory And his Ma<sup>tie</sup> being resolved and desirous to prosecute so good ane work for the universal good of his subjects and Especially for the encouragement of the ministers of the Gospell Therfor his Majesty with advice and Consent of his Estates of Parliament Gives full pouer and Commission to his Ma<sup>ties</sup> officers of Estate for the tyme being

or any thertein of

them to be ane Quorum whereof thrie of every State, with one of the officers of State to meet and convene at Ed<sup>r</sup> the day of years and such other place or places tymes or dyets as they shall appoynt To value and Cause be valued whomsoever teyndes great or small personage or viccarage within this Kingdom which are yet unvalued Declareing that where the viccarage of any paroch is a severall benefice and title from the Personage the samen shall be severally valued To the effect the titulars or ministers serving the Cure having right to the said viccarage be not frustrated of the true worth th<sup>of</sup> with pouer to the saids Commissioners or quorum foresaid to appoynt Comitties or sub-Comitties of their own number and to grant subcommissions and to receive reports from them and to approve or disapprove the same as they shall find just And to rectifie whatsoever valuations led or to be led to the enorme prejudice of the titulars or the hurt and detriment of the Church and prejudice of the ministers maintenance and provisions. Provideing always Lykeas It is hereby expressly provided and declared That where valuations are lauffully led against all persones having interest and allowed by former Commissioners The same shall not be drawn in question nor rectified upon pretence of enorme lesion at the instance of the minister (not being titular) or at the instance of his Ma<sup>ties</sup> advocat in respect of his Ma<sup>ties</sup> annuity Except it can be proven that Collusion was used betuixt the titulars and heretors, or betuixt the procurator fiscall & the heretors and Titulars which Collusion is declared to be when the valuations are led with the diminution of the third part of the just rent Which diminution shall be proven by the Pairties oath, and with pouer to the said Commissioners or Quorum foresaid where ministers are not already sufficiently provided or have not Localities already assigned to them for their stipends out of the teyndes within the paroch where they serve the Cure According to the quantities proportions and Rules Contained in the 19<sup>th</sup> act of the Parl: 1633 To modifie settle and appoynt constant ocal stipends to each minister out of the teyndes of the paroch where they serve the Cure With pouer also to the saids Commissioners to grant recompence by prorogation of tacks to pairties for all augmentations of stipends which are granted since the year 1630 or shall be granted and that effeirand to the augmentations already granted or to be granted as the saids Commissioners shall think fitt And sicklyk to disjoine too large and spacious paroches To cause erect and build new churches to annex and dismember Churches as they shall think convenient And to take order that every heretor and liferenter shall have the leading and buying of their own teyndes if they be willing according to the Rules prescribed by the 19<sup>th</sup> act and commission granted by his Ma<sup>ty</sup> with Consent of his Estates of Parliament in anno 1633 and the acts of Parliament therein mentioned with pouer to determine all questions Concerning the pryces of teyndes betuixt Titulars and others haveing ry<sup>t</sup> th<sup>to</sup> and the heretors And to appoynt such securities in favors of titulars and others haveing right to Teynds for their pryces to be granted to the heretors and others lyable in payment of valued duties or byers of the saids teyndes, and in favors of the Ministers as to th<sup>r</sup> maintenance, as the saids Commissioners shall think fitting According to the rules sett down in the

said act 1633 and each heretor whose teynds belongs to Titulars of Ereccion to have pouer and Liberty to buy the teynds of his oun Lands whither valued or not w<sup>in</sup> the space of thrie years after the date of this act with this declaration alwayes That in caice the impediment dureing the tyme forsaid flow from the titular by reason of his minority or vther inability In that caice the heretor who offered to buy his oun teynds within the space forsd shall have place soe soon as the impediment shall be removed to buy his teynds notwithstanding of the expyryng of the years and space after exprest And it is declared that if the heretor be minor and his tutor neglect the buying of his teynds within the forsaid space the minor shall have action for tuo years after his minority to compell the Titular to sell his teynds, and generally with power to the saids Commissioners to decide and determine in all other poynts which may concerne the drawing or leading of teynds the selling or buying of the same or payment of the rates th<sup>of</sup> contained in the former acts of Parliament or sett down in the generall determination given out by his Ma<sup>ties</sup> Royal father of blissed memory And if any persone or persones shall find themselves greeved and Complaine of the injustice and exorbitancie of any decreit or sentence given in any of the Commissions dureing the tyme of the late troubles With power to the saids Commissioners to take the same to th<sup>r</sup> Consideratione and alter, annull, or allow the saids decreets and sentences as they shall find just And it is always provided and declared That the Arch-bishops and Bishops and other benefited persons being ministers and th<sup>r</sup> Successors shall not be prejudged of the rents q<sup>of</sup> their predecessors were in Reall and actual possession And which by the Lawes of the Kingdom wer due to them in anno 1637 or whereof they are presently in possession And that they shall be no further bound but according to the conditions and provisions exprest in the submissions made by the bishops to his Ma<sup>ties</sup> Royall father of blissed memorie of the date the                      day                      1628 and registrat in the books of Commission for Surrenders and teynds upon the fifeinth day of July 1651 And whereas it may fall out that some of the Commissioners may be unable to attend the service through death sicknes or other knoun impediment Therefor his Ma<sup>ty</sup> declares that he shall be Carefull to fill their places w<sup>t</sup> other persons Qualified Who's oaths (for faithfull dischargeing of the same) shall be taken by the Lord Chancellor or in his absence by the Lord President of the Commission for the tyme, and ordaines this present Commission to endure ay and whill the same be discharged by his Ma<sup>tie</sup> And the acts decreets and sentence th<sup>of</sup> To have the force strength and effect of ane decreet or sentence of Parliament And the Lords of Session to grant Pres of horning poynding and others necessar to be direct upon the saids decreets and sentences in maner contained in the foresaid Commissions And his Majesty with consent foresaid hereby discharges all former Commissions Declareing the same to be expyred.<sup>318</sup>

<sup>318</sup> See note annexed to 1617, ch. 3.



## MEETING OF THE ESTATES.

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APUD EDINBURGH,

XIV DIE MARTII A.D. M,DC,LXXXIX.

28. *THE DECLARATION of the Estates of the Kingdom of Scotland containing the Claim of Right and the offer of the Crowne to the King & Queen of England.*

WHEREAS King James the Seventh Being a profest papist did assume the Regall power, and acted as King without ever takeing the oath required by law, wherby the King, at his access to the government is obliged to swear, To maintain the protestant religion, and to rule the people according to the laudable lawes ; And Did By the advyce of wicked and evil Counsellors Invade the fundamentall Constitution of this Kingdome And altered it from a legall limited monarchy, to ane Arbitrary Despotick power; and in a publick proclamation, asserted ane absolute power, to cass annull and disable all the lawes, particularly arraigning the lawes Establishing the protestant religion did Exerce that power to the subversion of the protestant Religion, and to the violation of the lawes and liberties of the Kingdome.

BY Erecting publick schooles and societies of the Jesuites and not only allowing mass to be publickly said But also inverting protestant Chappells and Churches to publick Mass houses Contrair to the express lawes against saying and hearing of Mass.

BY allowing popish bookes to be printed, and dispersed by a gift to a popish printer, designeing him Printer to his Majesties household, Colledge and Chappell Contrair to the lawes.

BY takeing the children of Protestant Noblemen and gentlemen sending and keeping them abroad, to be bred papists, makeing great fonds and dotationes to popish schooles and Colledges abroad, bestowing pensiones upon preists, and perverting protestants from ther Religion, by offers of places, preferments and pensiones.

BY Disarmeing protestants while at the same tyme he Employed papists in the places of greatest trust, civil and military; such as Chancellor Secretaries, Privie Counsellors, and Lords of Sessione, thrusting out protestants to make roome for papists, and Intrusting the forts and magazins of the Kingdome in ther hands.

BY Imposing oaths Contrair to law.

BY Giveing gifts and grants for exacting money, without consent of Parliament, or Conventione of Estates.

BY levying or Keeping on foot a standing army in tyme of Peace without Consent of Parliament which army did exact localitie free and dry quarters.

BY Implying the officers of the army as Judges through the Kingdome and Imposing them, wher ther were heretable offices and jurisdictiones by whom many of the leidges were put to death summarly, without legall tryall, jury or record.

BY imposing exorbitant fines, to the value of the pairties Estates exacting extravagant Baile, and disposing fines and forefaultors befor any proces or Conviction.

BY Imprisoning persones without expressing the reasons, and delaying to put them to tryall.

BY Causeing persue and forefault severall persones upon stretches of old and obsolete lawes, upon frivolous and weak pretences, upon lame and defective probationes as particularly the late Earle of Argyle, to the scandal and reproach of the justice of the Natione.

BY Subverting the right of the Royal Burghs, The third Estate of Parliament, imposing upon them not only magistrats, But also the whole tounne Councill and Clerks, contrary to their liberties and express chartours, without the pretence either of sentence, surrender or consent, so that the Commissioners to Parliaments, being chosen by the magistrats and Councill, The King might in effect als well nominat that entire Estate of Parliament; and many of the saids magistrats put in by him were avowed papists, and the Burghes were forced to pay money for the letters Imposing these illegall magistrats and Councils upon them.

BY Sending letters to the chiefe Courts of Justice, not only ordaining the Judges to stop and desist sine die to determine causes But also ordering and Commanding them how to proceed in cases depending befor them Contrair to the express lawes: and by chainging the nature of the Judges gifts ad vitam aut culpam, and giveing them Commissions ad beneplacitum, to dispose them to compliance with arbitrary Courses, and turneing them out of their offices when they did not comply.

BY granting personall protectiones for civill Debts contrair to Law.

ALL which are utterly and directly contrairy to the knounne lawes, statutes and freedomes of this realme.

THEREFOR the Estates of the kingdom of Scotland Find and Declaire That King James the Seventh being a profest papist, Did assume the Regall power and acted as king, without ever takeing the oath required by law, and hath by the advyce of Evill and wicked Counsellors, Invaded the fundamental Constitution of the Kingdome, and altered it from a legall limited monarchy To ane arbitrary

despotic power, and hath Exercised the same, to the subversione of the protestant religion, and the violation of the lawes and liberties of the Kingdome, inverting all the Ends of Government, wherby he hath forfeaulted the right to the Croune, and the throne is become vacant.

AND whereas His Royall Highness WILLIAM then Prince of ORANGE now King of England, whom it hath pleased Almighty God to make the glorious instrument of delyvering these Kingdomes from Popery and arbitrary power, did, By the advyce of severall Lords and Gentlemen of this Nation at London for the tyme call the Estates of this Kingdome to meet the fourteenth of March last, In order to such an Establishment, as that their Religion, lawes and liberties might not be again in danger of being subverted, And the saids Estates being now assembled, in a full and free representative of this Nation, Takeing to their most serious Consideratione, the best means for attaining the ends aforesaid Do In the first place, as ther ancestors in the like cases have usually done for the vindicating and asserting their antient rights and liberties, DECLARE

THAT By the law of this Kingdome no papist can be King or Queen of this realme, nor bear any Office whatsoever therein : nor can any protestant successor exercise the regall power, untill he or she swear the Coronation Oath.

THAT all Proclamationes asserting ane absolute power to Cass annull and Dissable lawes, The Erecting Schools and Colledges for Jesuits, The Inverting protestant Chappells and Churches to publick Mass houses and the allowing Mas to be said are Contrair to Law.

THAT the allowing Popish bookes to be printed and Dispersed is Contrairy law.

THAT the takeing the children of Noblemen, Gentlemen, and others, sending and Keeping them abroad to be bred papists, The makeing fonds and Dotations to popish schooles and Colledges The Bestowing pensiones on preists and the perverting protestants from ther religion by offers of places preferments and pensiones are Contrary to law.

THAT the Disarming of protestants and Imploying papists in the places of greatest trust, both Civil and military, the thrusting out protestants to make roome for papists, and the intrusting papists with the forts and magazines of the Kingdome are Contrary to Law.

THAT the Imposing oathes without authority of Parliament is Contrair to law.

THAT the giving gifts or grants for raiseing of moneey without the Consent of Parliament or Convention of Estates is Contrary to law.

THAT the Imploying the officers of the army as Judges through the Kingdome, or imposing them wher ther were heretable offices and Jurisdictiones and the putting the leidges to death summarly, and without legall tryall jury or record are Contrary to Law.

THAT the Imposing of extraordinary fynes, The exaacting of exorbitant Baile and the disposing of fynes and forefaultors befor sentence are Contrary to law.



THAT the Imprisoning persones without expressing the reason therof and delaying to put them to tryall, is contrary to law.

THAT the causeing persue and forefault persones upon stretches of old and obsolete lawes upon frivolous and weak pretences, upon lame and defective probation, as particularly the late Earle of Argyll, are Contrary to law.

THAT the nominating and Imposing the magistrats councils & clerks upon burghes contrary to ther liberties and expresse Charters is Contrary to law.

THAT the Sending letters to the courts of Justice, Ordaining the Judges to stop or desist from determining Causes, or ordaining them how to proceed in Causes depending befor them, and the changeing the nature of the Judges gifts ad vitam aut culpam Into Commissions durante beneplacito are Contrary to law.

THAT the granting personall protectiones for civil Debts is contrary to law.

THAT the forcing the leidges to Depone against themselves in capitall Crymes however the punishment be restricted is Contrary to law.

THAT the using torture without evidence, or in ordinary Crymes is Contrary to law.

THAT the Sending of ane army in ane hostile manner upon any pairt of the Kingdome, in a peaceable tyme, and Exacting of Locality and any manner of free quarters, is Contrary to law.

THAT the chargeing of the leidges with lawborrowes at the Kings instance, and the imposing of bonds, without the authority of Parliament, and the suspending advocates from their Employment for not Compearing when such bonds were offered were Contrary to Law.

That the putting of Garisones in privat mens houses in tyme of peace without their Consent, or the authority of Parliament is Contrary to law.

THAT the opinions of the Lords of Sessione in the two Cases following were Contrary to Law viz. (1.) That the concealing the Demand of a Supply for a forefaulted persone altho not given is treason. (2.) That persons refusing to discover what are their privat thoughts and judgements in relation to points of treason, or other mens actions, are guilty of treason.

THAT the fyneing husbands for ther wives withdrawing from the church was Contrary to law,

THAT Prelacy and the superiority of any office in the Church, above presbyters is, and hath been a great and insupportable greivance and trouble to this Nation, and contrary to the Inclinationes of the generality of the people ever since the reformatione (they haveing reformed from popery by presbyters) and therfor ought to be abolished.

THAT it is the right and priviledge of the subjects to protest for remeed of law

to the King and Parliament against Sentences pronounced by the lords of Sessione, Provydeing the samen Do not stop Execution of these sentences.

THAT it is the right of the subjects to petition the King, and that all Imprisonments and prosecutiones for such petitioning are Contrary to law.

THAT for redress of all greivances, and for the amending strenthneing and preserueing of the lawes, Parliaments ought to be frequently called and allowed to sit, and the freedom of speech & debate secured to the members.

AND they Doe Claim, Demand, and insist upon all & sundry the premisses as ther undoubted right and liberties, And that no Declarationes, Doeings or proceedings, to the prejudice of the people in any of the said premisses ought in any wayes to be drawne hereafter in Consequence or Example, But that all foresaytors, fynes, loss of offices, Imprisonments, Banishments, pursuits, persecutiones tortures, and rigorous Executiones be Considered, and the pairties lassed be redressed.

TO which Demand of ther rights and redressing of their greivances they are particularly Encouraged by his Majesty the King of England his Declaration for the Kingdome of Scotland of the                      day of October last, as being the only means for obtaining a full redress and remedy therin.

HAVEING therfor ane entire confidence, that his said Majesty the King of England will perfect the Delyverance so far advanced by him and will still preserve them from the violation of their Rights which they have here asserted, and from all other attempts upon their Religion lawes and liberties.

THE said Estates of the Kingdome of Scotland Doe resolve that WILLIAM & MARY King and Queen of England France & Ireland Be, and be Declared KING & QUEEN of SCOTLAND To hold the Crowne and Royall Dignity of the said Kingdome of Scotland, To them the said King and Queen dureing ther lives, and the longest liver of them, and that the sole & full exercise of the regall power, be only in and Exercised by him the said King in the names of the said King and Queen, Dureing ther joynt lives, And after ther decease The said Croune and Royall Dignity of the said Kingdome, to be to the heirs of the body of the said Queen which failing to the PRINCESS ANN OF DENMARK and the aires of her body, which also failing, to the aires of the Body of the said WILLIAM KING of ENGLAND.

AND they do Pray the said King and Queen of England to accept the same accordingly,

AND that the Oath hereafter mentioned, be taken by all protestants of whom the oath of allegiance, and any other oathes and Declarationes might be required by law, instead of them, And that the said oath of Allegiance, and other oaths and Declarationes may be abrogated.

I A : B : Do sincerely promise and swear, That I will be faithfull and bear true allegiance to their Majesties King WILLIAM & Queen MARY So help me GOD.

[And the Estates doe ordaine that this Declaration be ingrossed in parchment and recorded in the Register-bookes of Parliament.]

29. *PROCLAMATION declaring William & Mary King & Queen of England to be King and Queen of Scotland.*

WHEREAS the Estates of the Kingdome of Scotland By their act of the Dait of these presents, have resolved that WILLIAM AND MARY King and Queen of England France and Ireland Be, and be declared King and Queen of Scotland, To hold the Croune and Royall Dignity of the said Kingdome of Scotland to them the said King and Queen dureing their lives, and the longest liver of them, and that the sole and full exercise of the regall power Be only In, and exercised by the said King, in the names of the said King and Queen, Dureing their joynt lives As also the Estates haveing resolved and Enacted ane Instrument of Government, or Claim of right to be presented with the offer of the Croune to the said King and Queen They Do Statute & Ordain That WILLIAM & MARY King and Queen of England France and Ireland, Be accordingly forthwith Proclaimed KING & QUEEN OF SCOTLAND at the mercat cross of Edinburgh, by the lyon King at armes or his Deputs his brethren heralds macers and purservants, and at the head burghs of all the shyres, stewartries Bailliaries and regalities within the Kingdom by messengers at armes. Which proclamation was Ordained to be published at the mercat cross of Edinburgh Immediatly after adjourneing of the meeting.

30. *ACT declaring that the Estates are to continue in the Government untill the King and Queen of England accept the Croune.*

FORASMUCH as the Estates of this Kingdome by their former act declared, that they wold continue undissolved untill the government lawes and liberties of the Kingdome should be settled and secured And they haveing now proceeded to Resolve That WILLIAM & MARY King and Queen of England Be, and be Declaired King and Queen of Scotland, And considering that the Nation cannot be without government, untill the said King and Queen of England accept the offer of the Croune according to the Instrument of Government And take the Oath required befor they enter to the Exercise of the regall power Therefore the saids Estates Doe hereby Declare and Enact that they will continue in the government as formerly untill their Majesties acceptance of the Croune and their taking of the said oath be made Knoune to them.

The Articles of Grievances to be redressed in Parliament voted and approved.

THE Greivances prepared and brought in by the Committee for settleing the government being read, after argueing upon the severall articles they were voted and Approvon, wherof the tenor followes.

THE ESTATES of the Kingdome of Scotland Doe Represent that the Committee of Parliament called the Articles, is a great greivance to the Nation, and that there ought to be no Committees of Parliament but such as are freely chosen by the Estates to prepare motions and overtures that are first made in the house.

THAT the first act of Parliament 1<sup>m</sup> vj<sup>o</sup> sixtie nyne is Inconsistent with the Establishment of the Church Government now desyred and ought to be abrogated.

THAT forefaultors in prejudice of vassalls, Creditors and aires of entaile are a great greivance.

THAT the oblidging the leidges to depone upon crymes against delinquents utherwayes then when they are adduced in speciall processes as witnesses is a great greivance.

THAT Assyses of Error are a greivance, And that Juries be considered by Parliament.

THAT the eighteenth act of Parliament I<sup>m</sup> vj<sup>c</sup> eighty one Declareing a Cumulative Jurisdiction is a greivance.

THAT the Commissariot Courts as they are now constitute are a greivance.

THAT the twenty seventh act of Parliament I<sup>m</sup> vj<sup>c</sup> sixtie three giveing to the King power to Impose Custome at pleasure upon forraigne Import and trade is a greivance and prejudiciall to the trade of the Nation.

THAT the not takinge ane effectuall course to repress the depredations and robberies by the Highland clannes is a greivance.

THAT the Banishment by the Councill of the greatest pairt of the Advocates from Edinburgh without a proces was a greivance.

THAT most of the lawes enacted in the Parliament anno I<sup>m</sup> vj<sup>c</sup> eighty fyve are Impious and Intollerable greivances.

THAT the marriage of a King or Queen of this Realme to a Papist is dangerous to the protestant religion and ought to be provyded against.

THAT the levieing or keeping on foot a standing army in tyme of peace without consent of Parliament is a greivance.

THE following two articles were ordered to be added to the grievances viz

1. THAT all grievances relateing to the manner and measure of the leidges ther representatione in Parliament be considered and redressed in the first Parliament.

2. THAT the grievances of the Burrowes be considered and redressed in the first Parliament.

Upon the 24 of Apryll there were two articles ordered to be added to the Grievances which are recorded that day. Two Articles added to the Grievances.

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APUD EDINBURGH,

V DIE JUNII, A.D. M,DC,LXXXIX.

PARL<sup>r</sup>. 1st, Sess. 1st.

1. *ACT declaring the Meeting of the Estates to be a Parliament.*

THE King & Queens Majesties with advyce and consent of the Estates of this Kingdome presently assembled, Do Enact and Declare, that the three Estates now mett together this fyfth of June I<sup>m</sup> vj<sup>c</sup> eighty nyne consisting of the Noblemen Barons & Borroughs, are a lawfull and free Parliament, And are hereby De-

clared Enacted and Adjudged to be such, to all intents and purposes whatsoever, notwithstanding of the want of any new writts or proclamation for calling the same, or the want of any other solemnity, And that all acts and statutes to be past therein shall be received, acknowledged and obeyed by the subjects as acts of Parliament and lawes of this Kingdome And it is hereby declared, that it shall be high treasons for any persones to disoune, quarrell or Impugne the dignity and authoritie of this Parliament upon any pretence whatsoever, And ordains these presents to be published at the mercat cross of Edinburgh that none pretend ignorance.

Which act after it was voted was touched by his Majesties commissioner with the scepter.

#### 4. *ACT Abolishing Prelacie.*

WHEREAS the Estates of this Kingdome in their Claime of Right of the Eleavinth of Apryll last declared that Prelacie and the superioritie of any office in the church above Presbyters Is and hath been a greate and unsupportable greivance to this Nation, and contrair to the inclinationes of the generalitie of the people ever since the Reformation They haveing reformed from poperie by presbyters, and therfor ought to be abolished Our Sovereigne Lord & Lady the King & Queens Majesties with advyce and consent of the Estates of Parliament, doe hereby abolish prelacie and all superioritie of any office in the church in this Kingdome above presbyters, And hereby rescinds casses and annulls the first act of the second session of the first Parliament of King Charles the second, and the second act of the third session of the first Parliament of King Charles the second, and the fourth act of the third Parliament of King Charles the second, and all other acts statutes and constitutiones In so farr allenmerly as they are inconsistent with this act And doe establish prelacie or the superioritie of church officers above presbiters, And the King and Queens Majesties doe declare that they with advyce and consent of the Estates of this Parliam<sup>t</sup> will settle by law that Church Government in this Kingdome which is most agreeable to the inclinationes of the people.

#### APUD EDINBURGH,

XV DIE APRILIS, A.D. M.DC.XC.

PARL<sup>t</sup>. 1st, Sess. 2d.

The Confession of Faith.

THE CONFESSION OF FAITH under written was this day produced read and considered word by word in presence of their Majesties High Commissioner and the Estates of Parliament and being voted and approven was ordained to be recorded in the bookes of Parliament, off the which CONFESSION OF FAITH the Tenor followes

#### CHAP. I. OF THE HOLY SCRIPTURE.

ALTHOUGH the light of Nature and works of Creation and Providence, do so far manifest the goodness, wisdom, and power of God, as to leave men inexcusable; yet are they not sufficient to give that knowledge of God and of his will which is necessary unto salvation, Therefore it pleased the Lord at sundry times and in divers manners to reveal himself, and to declare that his will unto his Church:

and afterwards, for the better preserving and propagating of the truth, and for the more sure establishment and comfort of the Church against the corruption of the flesh and the malice of Satan and of the world, to commit the same wholly unto writing; which maketh the Holy Scripture to be most necessary, those former wayes of Gods revealing his will unto his people being now ceased.

2. UNDER the name of the Holy Scripture, or the word of God written, are now contained all the books of the Old and New Testament, which are these. OF THE OLD TESTAMENT. Genesis, Exodus, Leviticus, Numbers, Deuteronomy, Joshua, Judges, Ruth, I Samuel, II Samuel, I Kings, II Kings, I Chronicles, II Chronicles, Ezra, Nehemiah, Esther, Job, Psalms, Proverbs, Ecclesiastes, The Song of Songs, Isaiah, Jeremiah, Lamentations, Ezekiel, Daniel, Hosea, Joel, Amos, Obadiah, Jonah, Micah, Nahum, Habbakkuk, Zephaniah, Haggai, Zechariah, Malachi. OF THE NEW TESTAMENT. The Gospels according to Matthew, Mark, Luke, John, The Acts of the Apostles, Pauls Epistles to the Romans, I Corinthians, II Corinthians, Galatians, Ephesians, Philippians, Colossians, I Thessalonians, II Thessalonians, I to Timothy, II to Timothy, to Titus, to Philemon, The Epistle to the Hebrews, The Epistle of James, The first and second Epistles of Peter, The first second and third Epistles of John, The Epistle of Jude, The Revelation of John. All which are given by inspiration of God to be the rule of faith and life.

3. THE Books commonly called Apocrypha, not being of divine inspiration, are no part of the Canon of the Scripture; and therefore are of no authority in the Church of God, nor to be any otherwise approved, or made use of, than other human writings.

4. THE authority of the Holy Scripture, for which it ought to be believed and obeyed, dependeth not upon the testimony of any man, or Church; but wholly upon God (who is truth it self) the author thereof: and therefore it is to be received, because it is the Word of God.

5. WE may be moved and induced by the testimony of the Church to an high and reverent esteem of the Holy Scripture. And the heavenliness of the matter, the efficacy of the doctrine, the majesty of the style, the consent of all the parts, the scope of the whole, (which is to give all glory to God) the full discovery it makes of the only way of mans salvation, the many other incomparable excellencies, and the entire perfection thereof, are arguments whereby it doth abundantly evidence it self to be the Word of God; yet notwithstanding, our full persuasion and assurance of the infallible truth, and divine authority thereof, is from the inward work of the Holy Spirit, bearing witness by and with the Word, in our hearts.

6. THE whole counsell of God concerning all things necessary for his own glory, mans salvation, faith and life, is either expressly set down in Scripture, or by good and necessary consequence may be deduced from Scripture; unto which nothing at any time is to be added, whether by new revelations of the Spirit, or traditions of men; nevertheless, we acknowledge the inward illumination of the Spirit of God to be necessary for the saving understanding of such things as are revealed in the word; and that there are some circumstances concerning the worship of God, and government of the Church, common to human actions and societies, which are to be ordered by the light of nature and Christian prudence, according to the generall rules of the word, which are always to be observed.

7. ALL things in Scripture are not alike plain in themselves, nor alike clear unto all; yet those things which are necessary to be known, believed, and observed for salvation, are so clearly propounded and opened in some place of Scripture or other, that not only the learned, but the unlearned, in a due use of the ordinary means, may attain to a sufficient understanding of them.

8. THE Old Testament in Hebrew (which was the native language of the people of God of old) and the New Testament in Greek (which at the time of the writing of it was most generally known to the nations) being immediately inspired by God, and by his singular care and providence kept pure in all ages, are therefore authentical: so as, in all controversies of Religion, the Church is finally to appeal unto them; but because these originall tongues are not known to all the people of God, who have right unto, and interest in the Scriptures, and are commanded in the fear of God to read and search them, therefore they are to be translated into the vulgar language of every nation unto which they come, that the word of God dwelling plentifully in all, they may worship him in an acceptable manner; and through patience and comfort of the Scriptures, may have hope.

9. THE infallible rule of interpretation of Scripture is the Scripture it self; and therefore, when there is a question about the true and full sense of any Scripture, (which is not manifold but one) it must be searched and known by other places that speak more clearly.

10. THE supreme judge by which all controversies of Religion are to be determined, and all decrees of Councils, opinions of ancient writers, doctrines of men, and private spirits, are to be examined, and in whose sentence we are to rest, can be no other but the holy Spirit speaking in the Scripture.

#### CHAP. II. OF GOD, & THE HOLY TRINITY.

1. THERE is but one only living and true God, who is infinite in being and perfection, a most pure spirit, invisible, without body, parts, or passions, immutable, immense, eternall, incomprehensible, almighty, most wise, most holy, most free, most absolute, working all things according to the councill of his own immutable and most righteous will, for his own glory, most loving, gracious, mercifull, long suffering, abundant in goodness and truth, forgiving iniquity, transgression and sin; the rewarder of them that diligently seek him; and withall most just and terrible in his judgements, hating all sin; and who will by no means clear the guilty.

2. GOD hath all life, glory, goodness, blessedness, in and of himself; and is alone, in, and unto himself all sufficient, not standing in need of any creatures which he hath made, nor deriving any glory from them; but only manifesting his own glory, in, by, unto, and upon them: He is the alone fountain of all being, of whom, through whom, and to whom are all things; and hath most sovereign dominion over them, to do by them, for them, or upon them, whatsoever himself pleaseth. In his sight all things are open and manifest, his knowledge is infinite, infallible, and independent upon the creature, so as to him nothing is contingent, or uncertain: He is most holy in all his counsils, in all his works, and in all his commands: To him is due from angels and men, and every other creature, whatsoever worship, service, or obedience he is pleased to require of them.

3. IN the unity of the Godhead there be three persons of one substance, power,

and eternity, God the Father, God the Son, and God the Holy Ghost. The Father is of none, neither begotten nor proceeding; the Son is eternally begotten of the Father; the Holy Ghost eternally proceeding from the Father and the Son.

CHAP. III. OF GODS ETERNALL DECREE.

1. GOD from all eternity did, by the most wise and holy councill of his own will, freely and unchangeably ordain whatsoever comes to pass, yet so as thereby neither is God the author of sin, nor is violence offered to the will of the creatures, nor is the liberty or contingency of second causes taken away, but rather established.

2. ALTHOUGH God knows whatsoever may or can come to pass upon all supposed conditions, yet hath he not decreed any thing because he foresaw it as future, or as that which would come pass upon such conditions.

3. By the decree of God, for the manifestation of his glory, some men and angels are predestinated unto everlasting life, and others foreordained to everlasting death.

4. THOSE angels and men thus predestinated and foreordained, are particularly and unchangeably designed, and their number is so certain and definite, that it cannot be either increased or diminished.

5. THOSE of mankind that are predestinated unto life, God, before the foundation of the world was laid, according to his eternall and immutable purpose, and the secret councill and good pleasure of his will, hath chosen in Christ unto everlasting glory, out of his meer free grace and love, without any foresight of faith or good works, or perseverance in either of them, or any other thing in the creature, as conditions or causes moving him therunto, & all to the praise of his glorious Grace.

6. AS God hath appointed the elect unto glory, so hath he, by the eternall and most free purpose of his will, foreordained all the means thereunto: Wherefore they who are elected, being fallen in Adam, are redeemed by Christ, are effectually called unto faith in Christ, by his Spirit working in due season, are justified, adopted, sanctified, and kept by his power through faith unto salvation; neither are any other redeemed by Christ effectually called, justified, adopted, sanctified and saved, but the elect only.

7. THE rest of mankind God was pleased, according to the unsearchable councill of his own will, whereby he extendeth or withholdeth mercy, as he pleaseth, for the glory of his sovereign power over his creatures, to pass by, and to ordain them to dishonour and wrath, for their sin, to the praise of his glorious justice.

8. THE doctrine of this high mystery of Predestination is to be handled with special prudence and care, that men attending the will of God revealed in his word, and yielding obedience thereunto, may, from the certainty of their effectual vocation, be assured of their eternall election. So shall this doctrine afford matter of praise, reverence, and admiration of God, and of humility, diligence and abundant consolation to all that sincerely obey the Gospell.



CHAP. IV. OF CREATION.

1. IT pleased God the Father, Son, and Holy Ghost, for the manifestation of the glory of his eternall power, wisdom, and goodness, in the beginning to create, or make of nothing, the world, and all things therein, whether visible or invisible, in the space of six days, & all very good.

2. AFTER God had made all other creatures, he created man, male and female, with reasonable and immortall souls, and indued with knowledge, righteousness and true holiness, after his own image, having the Law of God written in their hearts, and power to fullfill it; and yet under a possibility of transgressing, being left to the liberty of their own will, which was subject unto change: Besyde this law written in their hearts, they received a command not to eat of the tree of knowledge of good and evil, which, whilst they kept, they were happy in their communion with God, and had dominion over the creatures.

CHAP. V. OF PROVIDENCE.

1. GOD the great Creator of all things, doth uphold, direct, dispose and governe all creatures, actions, and things, from the greatest even to the least, by his most wise and holy providence, according to his infallible foreknowledge, and the free and immutable councill of his own will, to the praise of the glory of his wisdom, power, justice, goodness and mercy.

2. ALTHOUGH in relation to the foreknowledge and decree of God, the first cause, all things come to pass immutably and infallibly; yet by the same providence, he ordereth them to fall out according to the nature of second causes, either necessarily, freely, or contingently.

3. GOD in his ordinary providence maketh use of means, yet is free to work, without, above, and against them at his pleasure.

4. THE Almighty power, unsearchable wisdom, and infinite goodness of God, so far manifest themselves in his providence, that it extendeth it self even to the first fall, and all other sins of angels and men, and that not by a bare permission, but such as hath joyned with it a most wise and powerfull bounding, and otherwayes ordering and governing of them, in a manifold dispensation, to his own holy ends, yet so as the sinfullness thereof proceedeth only from the creature, and not from God, who being most holy and righteous, neither is nor can be the author or approver of sin.

5. THE most wise righteous and gracious God doth often times leave for a season his own children to manifold temptations, and the corruption of their own hearts, to chastise them for their former sins, or to discover unto them the hidden strength of corruption, and deceitfulness of their hearts, that they may be humbled, and to raise them to a more close and constant dependence for their support upon himself, and to make them more watchfull against all future occasions of sin, and for sundry other just and holy ends.

6. AS for those wicked and ungodly men whom God, as a righteous judge, for former sins doth blind and harden, from them he not only withholdeth his grace, whereby they might have been enlightned in their understandings, and wrought upon in their hearts; but sometimes also withdraweth the gifts which they had,

and exposeth them to such objects, as their corruption makes occasions of sin, and and withall gives them over to their own lusts, the temptations of the world, and the power of Satan, whereby it comes to pass, that they harden themselves, even under those means which God useth for the softening of others.

7. AS the providence of God doth in generall reach to all creatures, so after a more speciall manner it taketh care of his church, and disposeth all things to the good thereof.

CHAP. VI. OF THE FALL OF MAN, OF SIN, & OF THE PUNISHMENT THEREOF.

1. OUR first parents being seduced by the subtilty and temptation of Satan, sinned in eating the forbidden fruit. This their sin God was pleased, according to his wise and holy councill to permit, having purposed to order it to his own glory.

2. BY this sin they fell from their originall righteousness and communion with God, and so became dead in sin, and wholly defiled in all the faculties and parts of soul and body.

3. THEY being the root of all mankind, the guilt of this sin was imputed, and the same death in sin and corrupted nature conveyed to all their posterity descending from them by ordinary generation.

4. FROM this originall corruption, whereby we are utterly indisposed, disabled, and made opposite to all good, and wholly inclined to all evil, do proceed all actual transgressions.

5. THIS corruption of nature during this life, doth remain in those that are regenerated: and although it be through Christ pardoned and mortified, yet both it self and all the motions thereof are truly and properly sin.

6. EVERY sin both original and actuall, being a transgression of the righteous law of God, and contrary thereunto, doth in its own nature bring guilt upon the sinner, whereby he is bound over to the wrath of God and curse of the law, and so made subject to death, with all miseries, spirituall temporall and eternall.

CHAP. VII. OF GODS COVENANT WITH MAN.

1. THE distance between God and the creature is so great, that although reasonable creatures do owe obedience unto him as their Creator, yet they could never have any fruition of him as their blessedness and reward, but by some voluntary condescension on Gods part, which he hath been pleased to express by way of Covenant.

2. THE first Covenant made with man was a Covenant of Works, wherein life was promised to Adam and in him to his posterity, upon condition of perfect and personall obedience.

3. MAN by his fall having made himself incapable of life by that Covenant, the Lord was pleased to make a second commonly called the Covenant of Grace, wherein he freely offered unto sinners, life and salvation by Jesus Christ, requiring of them faith in him that they may be saved, and promising to give unto all those that are ordained unto life his holy Spirit, to make them willing and able to believe.

4. THIS Covenant of Grace is frequently set forth in the Scripture by the name of a Testament, in reference to the death of Jesus Christ the Testator, and to the everlasting inheritance, with all things belonging to it therein bequeathed.

5. THIS Covenant was differently administred in the time of the Law and in the time of the Gospell; under the Law it was administred by promises, prophecies, sacrifices, circumcision, the paschall lamb, and other types and ordinances delivered to the people of the Jews, all foreshadowing Christ to come, which were for that time sufficient and efficacious, through the operation of the Spirit, to instruct and build up the elect in faith in the promised Messiah, by whom they had full remission of sins and eternall salvation, and is called the Old Testament.

6. UNDER the Gospell, when Christ the substance was exhibited, the ordinances in which his Covenant is dispensed, are the preaching of the word and the administration of the sacraments, of Baptism and the Lords Supper; which though fewer in number, and administred with more simplicity and less outward glory, yet in them it is held forth in more fullness, evidence, and spirituall efficacy, to all nations, both Jews & Gentiles, and is called the New Testament. There are not therefore two Covenants of Grace differing in substance, but one and the same under various dispensations.

#### CHAP. VIII. OF CHRIST THE MEDIATOR.

1. IT pleased God, in his eternall purpose, to choose and ordain the Lord Jesus, his only begotten Son, to be the mediator between God and man, the prophet, priest and king, the head and saviour of his Church, the heir of all things, and judge of the world, unto whom he did from all eternity give a people to be his seed, and to be by him in time redeemed, called, justified, sanctified and glorified.

2. THE Son of God, the second person of the Trinity, being very and eternall God, of one substance, and equall with the Father, did, when the fullness of time was come, take upon him mans nature, with all the essential properties and common infirmities thereof, yet without sin, being conceived by the power of the Holy Ghost in the womb of the virgin Mary, of her substance. So that two whole, perfect, and distinct natures, the Godhead and the Manhood, were inseparably joyned together in one Person, without conversion, composition, or confusion: Which person is very God and very Man, yet one Christ, the only mediator between God and Man.

3. THE Lord Jesus, in his human nature thus united to the divine, was sanctified and anointed with the holy Spirit above measure, having in him all the treasures of wisdom and knowledge; in whom it pleased the Father, that all fullness should dwell; to the end that being holy, harmless and undefiled, and full of grace and truth, he might be thoroughly furnished to execute the office of a Mediator and Surety, which office he took not unto himself, but was thereunto called by his Father, who put all power and judgment into his hand, and gave him commandment to execute the same.

4. THIS office the Lord Jesus did most willingly undertake, which that he might discharge, he was made under the Law, and did perfectly fulfill it, endured most grievous torments immediately in his soul, and most painfull sufferings in his body, was crucified and died, was buried and remained under the power of death, yet saw no corruption; on the third day he rose from the dead with the

same body in which he suffered, with which also he ascended into heaven, and there sitteth at the right hand of his Father, making intercession, and shall return to judge men and angels at the end of the world.

5. THE Lord Jesus by his perfect obedience and sacrifice of himself, which he, through the eternall Spirit, once offered up unto God, hath fully satisfied the justice of his Father, and purchased not only reconciliation, but an everlasting inheritance in the kingdom of heaven, for all those whom the Father hath given unto him.

6. ALTHOUGH the work of redemption was not actually wrought by Christ till after his incarnation, yet the virtue, efficacy and benefits thereof were communicated unto the elect in all ages successively, from the beginning of the world, in and by those promises, types and sacrifices, wherein he was revealed and signified to be the seed of the woman, which should bruise the serpents head; and the Lamb slain from the beginning of the world, being yesterday and to day the same, and for ever.

7. CHRIST, in the work of mediation, acteth according to both natures, by each nature doing that which is proper to it self: yet by reason of the unity of the person, that which is proper to one nature, is sometimes in Scripture attributed to the person denominated by the other nature.

8. TO all those for whom Christ hath purchased redemption, he doth certainly and effectually apply and communicate the same, making intercession for them, and revealling unto them in and by the word, the mysteries of salvation, effectually persuading them by his spirit to believe and obey, and governing their hearts by his word and spirit, overcoming all their enemies by his almighty power and wisdom, in such manner and wayes as are most consonant to his wonderfull and unsearchable dispensation.

#### CHAP. IX. OF FREE WILL.

1. GOD hath endued the will of man with that naturall liberty, that is neither forced, nor by any absolute necessity of nature determined, to do good or evill.

2. MAN in his state of innocency, had freedom and power to will and to do that which was good and well pleasing to God: but yet mutably so that he might fall from it.

3. MAN by his fall into a state of sin hath wholly lost all ability of will to any spirituall good accompanying salvation; so as a naturall man, being altogether averse from that good, and dead in sin, is not able by his own strength to convert himself, or to prepare himself thereunto.

4. WHEN God converts a sinner, and translates him into the state of grace, he freeth him from his naturall bondage under sin, and by his grace alone enables him freely to will and to do that which is spirituall good; yet so as that, by reason of his remaining corruption, he doth not perfectly, nor only, will that which is good, but doth also will that which is evil.

5. THE will of man is made perfectly and immutably free to do good alone, in the state of glory only.

CHAP. X. OF EFFECTUAL CALLING.

1. ALL those whom God hath predestinated unto life, and those only, he is pleased in his appointed and accepted time effectually to call, by his word and Spirit, out of that estate of sin and death in which they are by nature, to grace and salvation by Jesus Christ, enlightening their minds, spiritually and savingly to understand the things of God; taking away their heart of stone, and giving unto them an heart of flesh; renewing their wills, and by his almighty power determining them to that which is good, and effectually drawing them to Jesus Christ, yet so as they come most freely, being made willing by his grace.

2. THIS effectuall call is of Gods free and speciall grace alone, not from any thing at all foreseen in man, who is altogether passive therein, untill being quickened and renewed by the holy Spirit, he is thereby enabled to answer this call, and to embrace the grace offered and conveyed in it.

3. ELECT infants, dying in infancy, are regenerated and saved by Christ, through the Spirit, who worketh when and where and how he pleaseth: so also are all other elect persons, who are incapable of being outwardly called by the ministry of the word.

4. OTHERS, not elected, although they may be called by the ministry of the word, and may have some common operations of the Spirit, yet they never truly come unto Christ, and therefore cannot be saved; much less can men not professing the Christian Religion be saved in any other way whatsoever, be they never so diligent to frame their lives according to the light of nature, and the law of that religion they do profess; and to assert and maintain that they may, is very pernicious and to be detested.

CHAP. XI. OF JUSTIFICATION.

1. THOSE whom God effectually calleth, he also freely justifieth, not by infusing righteousness into them, but by pardoning their sins, and by accounting and accepting their persons as righteous; not for any thing wrought in them or done by them, but for Christs sake alone; nor by imputing faith it self, the act of believing, or any other evangelicall obedience to them as their righteousness; but by imputing the obedience and satisfaction of Christ unto them, they receiveing and resting on him and his righteousness by faith; which faith they have not of themselves; it is the gift of God.

2. FAITH, thus receiveing and resting on Christ and his righteousness, is the alone instrument of justification; yet it is not alone in the person justified, but is ever accompanied with all other saving graces, and is no dead faith, but worketh by love.

3. CHRIST by his obedience and death did fully discharge the debt of all those that are thus justified, and did make a proper reall and full satisfaction to his Fathers justice in their behalf: yet, in as much as he was given by the Father for them, and his obedience and satisfaction accepted in their stead, and both freely, not for any thing in them, their justification is only of free grace, that both the exact justice and rich grace of God might be glorified in the justification of sinners.

4. GOD did from all eternity decree to justify all the elect, and Christ did in the fullness of time die for their sins, and rise again for their justification : nevertheless, they are not justified untill the holy spirit doth in due time actually apply Christ unto them.

5. GOD doth continue to forgive the sins of those that are justified, and although they can never fall from the state of justification, yet they may by their sins fall under Gods fatherly displeasure, and not have the light of his countenance restored unto them, untill they humble themselves, confess their sins, beg pardon, and renew their faith and repentance.

6. THE justification of believers under the Old Testament, was in all these respects one and the same with the justification of believers under the New Testament.

#### CHAP. XII. OF ADOPTION.

1. ALL those that are justified, God vouchsafeth, in and for his only son Jesus Christ, to make partakers of the grace of adoption, by which they are taken into the number, and enjoy the liberties and priviledges of the children of God, have his name put upon them, receive the spirit of adoption, have access to the throne of grace with boldness, and are enabled to cry, Abba, Father, are pitied, protected, provided for, and chastened by him as by a father, yet never cast off, but sealed to the day of redemption, and inherit the promises as heirs of everlasting salvation.

#### CHAP. XIII. OF SANCTIFICATION.

1. THEY who are effectually called and regenerated, having a new heart and a new spirit created in them, are further sanctified, really and personally, through the virtue of Christs death and resurrection, by his word and spirit dwelling in them ; the dominion of the whole body of sin is destroyed, and the severall lusts therof are more and more weakened and mortified, and they more and more quickened and strengthened in all saving graces, to the practise of true holiness, without which no man shall see the Lord.

2. THIS sanctification is throughout, in the whole man, yet imperfect in this life ; there abideth still some remnants of corruption in every part, whence ariseth a continuall and irreconcilable war, the flesh lusting against the spirit, and the spirit against the flesh.

3. IN which war, although the remaining corruption for a time may much prevail, yet through the continuall supply of strength from the sanctifying spirit of Christ, the regenerate part doth overcome, and so the saints grow in grace, perfecting holiness in the fear of God.

#### CHAP. XIV. OF SAVING FAITH.

1. THE grace of faith, whereby the elect are enabled to believe to the saving of their souls, is the work of the spirit of Christ in their hearts, and is ordinarily wrought by the ministry of the word, by which also, and by the administration of the sacraments and prayer, it is increased and strengthened.

2. BY this faith a christian believeth to be true whatsoever is revealed in the word, from the authority of God himself speaking therein, and acteth differently upon that which each particular passage thereof containeth ; yielding obedience to

the commands, trembling at the threatnings, and embracing the promises of God for this life and that which is to come. But the principall acts of saving faith, are accepting, receiving, and resting upon Christ alone for justification, sanctification and eternall life, by virtue of the Covenant of Grace.

3. THIS faith is different in degrees, weak or strong; may be often and many wayes assailed and weakened, but gets the victory, growing up in many to the attainment of a full assurance through Christ, who is both the author and finisher of our faith.

#### CHAP. XV. OF REPENTANCE UNTO LIFE.

1. REPENTANCE unto life is an evangelicall grace, the doctrine whereof is to be preached by every minister of the Gospell.

2. BY it a sinner, out of the sight and sense not only of the danger, but also of the filthiness and odiousness of his sins, as contrary to the holy nature and righteous law of God, and upon the apprehension of his mercy in Christ to such as are penitent, so grieves for, and hates his sins, as to turn from them all unto God, purposing and endeavouring to walk with him in all the wayes of his commandments.

3. ALTHOUGH repentance be not to be rested in as any satisfaction for sin, or any cause of the pardon thereof, which is the act of Gods free grace in Christ, yet is it of such necessity to all sinners, that none may expect pardon without it.

4. AS there is no sin so small but it deserves damnation; so that there is no sin so great that it can bring damnation upon those who truly repent.

5. MEN ought not to content themselves with a generall repentance, but it is every mans duty to endeavour to repent of his particular sins particularly.

6. AS every man is bound to make private confession of his sins to God, praying for the pardon thereof, upon which, and the forsaking of them, he shall find mercy; so he that scandalizeth his brother or the church of Christ ought to be willing by a private or publick confession and sorrow for his sins, to declare his repentance to those that are offended, who are thereupon to be reconciled to him, and in love to receive him.

#### CHAP. XVI. OF GOOD WORKS.

1. GOOD works are only such as God hath commanded in his Word, and not such as without the warrant thereof are devysed by men out of blind zeal, or upon pretence of good intention.

2. THOSE good works done in obedience to Gods commandments, are the fruits and evidences of a true and lively faith, and by them believers manifest their thankfulness, strengthen their assurance, edify their brethren, adorn the profession of the Gospell, stop the mouths of the adversaries, and glorify God, whose workmanship they are, created in Christ Jesus thereunto; that having their fruit unto holiness, they may have in the end eternall life.

3. THEIR ability to do good works is not at all of themselves but wholly from the spirit of Christ. And that they may be enabled thereunto, besides the graces

they have already received, there is required an actuall influence of the same holy Spirit, to work in them to will and to do of his good pleasure; yet are they not hereupon to grow negligent, as if they were not bound to perform any duty, unless upon a speciall motion of the spirit; but they ought to be diligent in stirring up the grace of God that is in them.

4. THEY who in their obedience attain to the greatest height which is possible in this life, are so far from being able to supererogate and to do more than God requires, as that they fall short of much which in duty they are bound to do.

5. WE cannot by our best works merit pardon of sin or eternall life at the hand of God, by reason of the great disproportion that is between them and the glory to come, and the infinite distance that is between us and God, whom by them we can neither profit nor satisfy for the debt of our former sins, but when we have done all we can, we have done but our duty, and are unprofitable servants; and because as they are good they proceed from his Spirit, and as they are wrought by us, they are defiled and mixed with so much weakness and imperfection, that they cannot endure the severity of Gods judgement.

6. YET notwithstanding, the persons of believers being accepted through Christ, their good works also are accepted in him; not as though they were in this life wholly unblameable and unreproveable in Gods sight; but that he looking upon them in his Son, is pleased to accept & reward that which is sincere, although accompanied with many weaknesses and imperfections.

7. WORKS done by unregenerate men, although for the matter of them they may be things which God commands, and of good use both to themselves and others, yet because they proceed not from a heart purified by faith, nor are done in a right manner according to the Word, nor to a right end, the glory of God, they are therefore sinfull, and cannot please God, or make a man meet to receive grace from God; and yet their neglect of them is more sinfull and displeasing unto God.

#### CHAP. XVII. OF THE PERSEVERANCE OF THE SAINTS.

1. THEY whom God hath accepted in his beloved, effectually called and sanctified by his Spirit, can neither totally nor finally fall away from the state of grace, but shall certainly persevere therein to the end, and be eternally saved.

2. THIS perseverance of the saints depends not upon their own free will, but upon the immutability of the decree of election, flowing from the free and unchangeable love of God the Father, upon the efficacy of the merit and intercession of Jesus Christ, the abiding of the Spirit, & of the seed of God within them, and the nature of the Covenant of Grace; from all which ariseth also the certainty and infallibility thereof.

3. NEVERTHELESS they may, through the temptations of Satan, and of the world, the prevalancy of corruption remaining in them, and the neglect of the means of their preservation, fall into grievous sins, and for a time continue therein, whereby they incur Gods displeasure, and grieve his holy Spirit, come to be deprived of some measure of their graces and comforts, have their hearts hardened and their consciences wounded, hurt and scandalize others, and bring temporall judgments upon themselves.



## CHAP. XVIII. OF THE ASSURANCE OF GRACE AND SALVATION.

1. **ALTHOUGH** hypocrites and other unregenerate men, may vainly deceive themselves with false hopes and carnall presumptions of being in the favor of God and estate of salvation ; which hope of theirs shall perish : yet such as truly believe in the Lord Jesus, and love him in sincerity, endeavouring to walk in all good conscience before him, may in this life be certainly assured that they are in the state of grace, and may rejoyce in the hope of the glory of God, which hope shall never make them ashamed.

2. **THIS** certainty is not a bare conjecturall and probable persuasion, grounded upon a fallible hope, but an infallible assurance of faith, founded upon the divine truth of the promises of salvation, the inward evidence of those graces unto which these promises are made, the testimony of the spirit of adoption, witnessing with our spirits that we are the children of God ; which spirit is the earnest of our inheritance, whereby we are sealed to the day of redemption.

3. **THIS** infallible assurance doth not so belong to the essence of faith, but that a true believer may wait long, and conflict with many difficulties, before he be partaker of it ; yet being enabled by the spirit to know the things which are freely given him of God, he may without extraordinary revelation, in the right use of ordinary means, attain thereunto ; and therefore it is the duty of every one, to give all diligence to make his calling and election sure, that thereby his heart may be enlarged in peace and joy in the Holy Ghost, in love and thankfulness to God, and in strength and cheerfulness in the duties of obedience, the proper fruits of this assurance : so far is it from inclining men to looseness.

4. **TRUE** believers may have the assurance of their salvation divers ways shaken, diminished, and intermitted ; as by negligence in preserving of it, by falling into some speciall sin which woundeth the conscience and grieveth the spirit, by some sudden or vehement temptation, by Gods withdrawing the light of his countenance, and suffering even such as fear him to walk in darkness and to have no light ; yet are they never utterly destitute of the seed of God, and life of faith, that love of Christ and the brethren, that sincerity of heart and conscience of duty, out of which, by the operation of the spirit, this assurance may in due time be revived, and by the which in the mean time they are supported from utter despair.

## CHAP. XIX. OF THE LAW OF GOD.

1. **GOD** gave to Adam a Law, as a Covenant of Works, by which he bound him and all his posterity to personall, entire, exact, and perpetuall obedience, promised life upon the fulfilling, and threatned death upon the breach of it ; and endued him with power and ability to keep it.

2. **THIS** Law after his fall continued to be a perfect rule of righteousness, and as such was delivered by God upon Mount Sinai, in ten commandments, and written in two tables ; the four first commandments containing our duty towards God, and the other six our duty to man.

3. **BESIDE** this Law commonly called Moral, God was pleased to give the people of Israel, as a Church under age, Ceremoniall Laws, containing severall typicall ordinances, partly of worship, prefiguring Christ, his graces, actions, sufferings, and benefits ; and partly holding forth divers instructions of moral duties : all which Ceremoniall Laws are now abrogated under the New Testament.

4. TO them also, as a body politick, he gave sundry judicall laws, which expired together with the state of that people; not obliging any other now, further then the generall equity thereof may require.

5. THE Moral Law doth for ever bind all, as well justified persons as others, to the obedience thereof; and that not only in regard of the matter contained in it, but also in respect of the authority of God the Creator who gave it; neither doth Christ in the gospell any way dissolve, but much strengthen this obligation.

6. ALTHOUGH true believers be not under the Law as a Covenant of Works, to be thereby justified or condemned; yet it is of great use to them as well as to others, in that, as a rule of life, informing them of the will of God and their duty, it directs and binds them to walk accordingly, discovering also the sinfull pollutions of their nature, hearts and lives; so as, examining themselves thereby, they may come to further conviction of humiliation for, and hatred against sin, together with a clearer sight of the need they have of Christ, and the perfection of his obedience. It is likewise of use to the regenerate to restrain their corruptions, in that it forbids sin, and the threatnings of it serve to shew what even their sins deserve, and what afflictions in this life they may expect for them, although freed from the curse thereof threatned in the Law. The promises of it in like manner shew them Gods approbation of obedience, and what blessings they may expect upon the performance thereof, although not as due to them by the Law, as a Covenant of Works, so as a mans doing good and refraining from evil, because the law encourageth to the one and deterreth from the other, is no evidence of his being under the Law and not under Grace.

7. NEITHER are the forementioned uses of the Law contrary to the grace of the Gospell, but do sweetly comply with it: the spirit of Christ subduing and enabling the will of man to do that freely and cheerfully, which the will of God revealed in the Law requireth to be done.

#### CHAP. XX. OF CHRISTIAN LIBERTY, & LIBERTY OF CONSCIENCE.

1. THE liberty which Christ hath purchased for believers under the Gospell consists in their freedom from the guilt of sin, the condemning wrath of God, the curse of the Moral Law; and in their being delivered from this present evil world, bondage to Satan, and dominion of sin, from the evil of afflictions, the sting of death, the victory of the grave, and everlasting damnation; as also in their free access to God, and their yielding obedience unto him, not out of slavish fear, but a child-like love and willing mind; all which were common also to believers under the Law. But under the New Testament, the liberty of Christians is further enlarged in their freedom from the yoke of the Ceremoniall Law, to which the Jewish Church was subjected, and in greater boldness of access to the throne of grace, and in fuller communication of the free spirit of God, than believers under the Law did ordinarily partake of.

2. GOD alone is Lord of the conscience, and hath left it free from the doctrines and commandments of men, which are in any thing contrary to his Word, or beside it, in matters of faith or worship; so that to believe such doctrines, or to obey such

commands out of conscience, is to betray true liberty of conscience, and the requiring of an implicit faith, and an absolute and blind obedience, is to destroy liberty of conscience and reason also.

3. THEY who upon pretence of Christian liberty, do practise any sin, or cherish any lust, do thereby destroy the end of Christian liberty, which is, that being delivered out of the hands of our enemies, we might serve the Lord without fear, in holiness and righteousness before him, all the days of our life.

4. AND because the powers which God hath ordained, and the liberty which Christ hath purchased, are not intended by God to destroy, but mutually to uphold and preserve one another; they who, upon pretence of Christian liberty, shall oppose any lawfull power, or the lawfull exercise of it, whether it be civil or ecclesiasticall, resist the ordinance of God; and for their publishing of such opinions, or maintaining of such practices as are contrary to the light of nature, or to the known principles of Christianity, whether concerning faith worship or conversation; or to the power of godliness; or such erroneous opinions or practices, as either in their own nature, or in the manner of publishing or maintaining them, are destructive to the externall peace and order which Christ hath established in the Church, they may be lawfully called to account, and proceeded against by the censures of the Church, and by the power of the civil Magistrate.

#### CHAP. XXI. OF RELIGIOUS WORSHIP, AND THE SABBATH DAY.

1. THE light of nature sheweth that there is a God, who hath lordship and sovereignty over all, is good, and doth good unto all, and is therefore to be feared, loved, praised, called upon, trusted in, and served with all the heart, and with all the soul, and with all the might. But the acceptable way of worshipping the true God is instituted by himself, and so limited by his own revealed will, that he may not be worshipped according to the imaginations and devices of men, or the suggestions of Satan, under any visible representation, or any other way not prescribed in the holy Scripture.

2. RELIGIOUS worship is to be given to God the Father, Son and Holy Ghost, and to him alone, not to angells, saints, or any other creature; and, since the fall, not without a mediator, nor in the mediation of any other but of Christ alone.

3. PRAYER with thanksgiving, being one speciall part of religious worship, is by God required of all men; and that it may be accepted, it is to be made in the name of the Son by the help of his spirit, according to his will, with understanding, reverence, humility, fervency, faith, love and perseverance, and, if vocall, in a known tongue.

4. PRAYER is to be made for things lawfull, and for all sorts of men living, or that shall live hereafter; but not for the dead, nor for those of whom it may be known that they have sinned the sin unto death.

5. THE reading of the Scriptures with godly fear, the sound preaching and conscionable hearing of the word, in obedience unto God, with understanding, faith

and reverence, singing of psalms with grace in the heart, as also the due administration and worthy receiving of the Sacraments instituted by Christ, are all parts of the ordinary religious worship of God, beside religious oaths, vows, solemn fastings and thanksgivings upon speciall occasions, which are, in their severall times, and seasons, to be used in an holy and religious manner.

6. NEITHER prayer, nor any other part of religious worship, is now under the Gospell, either tyed unto, or made more acceptable by, any place in which it is performed, or towards which it is directed; but God is to be worshipped every where in spirit in truth, as in private families, daily, and in secret, each one by himself; so more solemnly in the publick assemblies, which are not carelessly or wilfully to be neglected or forsaken, when God by his word or providence calleth thereunto.

7. AS it is of the law of nature, that in generall a due proportion of time be set apart for the worship of God, so in his word, by a positive, morall and perpetuall commandment, binding all men in all ages, he hath particularly appointed one day in seven for a Sabbath to be kept holy unto him; which from the beginning of the world to the resurrection of Christ, was the last day of the week; and, from the resurrection of Christ, was changed into the first day of the week, which in Scripture is called the Lords day, and is to be continued to the end of the world as the Christian Sabbath.

8. THIS Sabbath is then kept holy unto the Lord, when men after a due preparing of their hearts, and ordering of their common affairs before hand, do not only observe a holy rest all the day from their own works, words and thoughts about their worldly employments and recreations, but also are taken up the whole time in the publick and private exercises of his worship, and in the duties of necessity & mercy.

#### CHAP. XXII. OF LAWFULL OATHS AND VOWS.

1. A lawfull oath is a part of religious worship, wherein, upon just occasion, the person swearing solemnly calleth God to witnes what he asserteth or promiseth, and to judge him according to the truth or falshood of what he sweareth.

2. THE name of God only is that by which men ought to swear, and therein it is to be used with all holy fear and reverence; therefore to swear vainly or rashly, by that glorious and dreadfull name, or to swear at all by any other thing, is sinfull and to be abhorred. Yet as in matters of weight and moment, an oath is warranted by the word of God under the New Testament, as well as under the Old; so a lawfull oath, being imposed by lawfull authority, in such matters ought to be taken.

3. WHOSOEVER taketh an oath ought duely to consider the weightiness of so solemn an act, and thereunto avouch nothing but what he is fully persuaded is the truth; neither may any man bind himself by oath to any thing but what is good and just, and what he believeth so to be, and what he is able and resolved to perform; yet it is a sin to refuse an oath, touching any thing that is good and just, being imposed by lawfull authority.

4. AN oath is to be taken in the plain and common sense of the words, without equivocation or mentall reservation. It cannot oblige to sin, but, in any thing not sinfull, being taken, it binds to performance, although to a mans own hurt; nor is it to be violated, although made to hereticks or infidels.

5. A vow is of the like nature with a promissory oath, and ought to be made with the like religious care, and to be performed with the like faithfulness.

6. IT is not to be made to any creature but to God alone, and that it may be accepted, it is to be made voluntarily, out of faith and conscience of duty, in way of thankfulness for mercy received, or for the obtaining of what we want, whereby we more strictly bind ourselves to necessary duties, or to other things, so far and so long as they may fitly conduce thereunto.

7. NO man may vow to do any thing forbidden in the Word of God, or what would hinder any duty therein commanded; or which is not in his own power, and for the performance whereof he hath no promise of ability from God; in which respects, popish monasticall vows of perpetuall single life, professed poverty, and regular obedience, are so far from being degrees of higher perfection, that they are superstitious and sinfull snares, in which no Christian may intangle himself.

#### CHAP. XXIII. OF THE CIVIL MAGISTRATE.

1. GOD, the supreme Lord and King of all the world, hath ordained Civil Magistrates to be under him, over the people, for his own glory and the publick good; and to this end hath armed them with the power of the sword, for the defence and encouragement of them that are good, and for the punishment of evil doers.

2. IT is lawfull for Christians to accept and execute the office of a magistrate when called thereunto; in the managing whereof, as they ought especially to maintain piety justice and peace, according to the wholesome laws of each Commonwealth; so for that end they may lawfully, now under the New Testament, wage war, upon just and necessary occasion.

3. THE civil Magistrate may not assume to himself the administration of the word and sacraments, or the power of the keys of the kingdom of heaven; yet he hath authority, and it is his duty to take order, that unity and peace be preserved in the Church, that the truth of God be kept pure and entire, that all blasphemies and heresies be suppressed, all corruptions and abuses in worship and discipline prevented or reformed, and all the ordinances of God duly settled, administered, and observed; for the better effecting whereof, he hath power to call synods, to be present at them, and to provide that whatsoever is transacted in them, be according to the mind of God.

4. IT is the duty of people to pray for Magistrates, to honour their persons, to pay them tribute and other dues, to obey their lawfull commands, and to be subject to their authority, for conscience sake. Infidelity or difference in religion doth not make void the magistrates just and legal authority, nor free the people from their due obedience to him; from which ecclesiasticall persons are not exempted; much less hath the Pope any power or jurisdiction over them in their

dominions, or over any other people, and least of all to deprive them of their dominions or lives, if he shall judge them to be hereticks, or upon any other pretence whatsoever.

CHAP. XXIV. OF MARRIAGE & DIVORCE.

1. **MARRIAGE** is between one man and one woman ; neither is it lawfull for any man to have more than one wife, nor for any woman to have more then one husband, at the same time.

2. **MARRIAGE** was ordained for the mutuall help of husband and wife, for the increase of mankind with a legitimate issue, and of the Church with an holy seed, and for preventing of uncleanness.

3. IT is lawfull for all sorts of people to marry who are able with judgement to give their consent ; yet it is the duty of Christians to marry only in the Lord, and therefore such as profess the true reformed religion, should not marry with infidels, papists or other idolaters, neither should such as are godly be unequally yoked, by marrying with such as are notoriously wicked in their life, or maintain damnable heresies.

4. **MARRIAGE** ought not to be within the degrees of consanguinity or affinity forbidden in the Word, nor can such incestuous marriages ever be made lawfull by any law of man, or consent of parties, so as these persons may live together as man and wife. The man may not marry any of his wifes kindred nearer in blood than he may of his own, nor the woman of the husbands kindred nearer in blood than of her own.

5. **ADULTERY** or fornication committed after a contract, being detected before marriage, giveth just occasion to the innocent party to dissolve that contract. In the case of adultery after marriage, it is lawfull for the innocent party to sue out a divorce, and after the divorce to marry another, as if the offending party were dead.

6. **ALTHOUGH** the corruption of man be such, as is apt to study arguments, unduly to put asunder those whom God hath joyned together in marriage, yet nothing but adultery, or such willful desertion as can noways be remedied by the Church or civil magistrate, is cause sufficient of dissolving the bond of marriage, wherein a publick and orderly course of proceeding is to be observed, and the persons concerned in it, not left to their own wills and discretion in their own case.

CHAP. XXV. OF THE CHURCH.

1. **THE** Catholick or universall Church, which is invisible, consists of the whole number of the elect, that have been, are, or shall be gathered into one, under Christ the head thereof ; and is the spouse, the body, the fullness of him that filleth all in all.

2. **THE** visible Church, which is also catholick or universall, under the Gospell (not confined to one nation as before under the Law) consists of all those throughout the world that profess the true religion, together with their children ;

and is the kingdom of the Lord Jesus Christ, the house and family of God, out of which there is no ordinary possibility of salvation.

3. UNTO this Catholick visible Church, Christ hath given the ministry, oracles, and ordinances of God, for the gathering and perfecting of the saints in this life, to the end of the world; and doth by his own presence and Spirit according to his promise, make them effectual thereunto.

4. This Catholick Church hath been sometimes more, sometimes less visible, and particular Churches which are members thereof are more or less pure, according as the doctrine of the Gospell is taught and embraced, ordinances administred, and publick worship performed, more or less purely in them.

5. THE purest Churches under heaven are subject both to mixture and error, and some have so degenerated as to become no Churches of Christ, but synagogues of Satan: nevertheless, there shall be always a Church on earth, to worship God according to his will.

6. THERE is no other head of the Church but the Lord Jesus Christ, nor can the Pope of Rome, in any sense be head thereof, but is that Antichrist, that man of sin, and son of perdition, that exalteth himself in the Church against Christ, and all that is called God.

#### CHAP. XXVI. OF THE COMMUNION OF SAINTS.

1. ALL saints that are united to Jesus Christ their head by his spirit and by faith, have fellowship with him in his graces, sufferings, death, resurrection and glory: and being united to one another in love, they have communion in each others gifts and graces, and are obliged to the performance of such duties publick and private as do conduce to their mutuall good, both in the inward and outward man.

2. SAINTS by profession are bound to maintain an holy fellowship and communion in the worship of God, and in performing such other spirituall services as tend to their mutuall edification; as also in relieving each other in outward things, according to their severall abilities and necessities; which communion, as God offereth opportunity, is to be extended to all those who in every place call upon the name of the Lord Jesus.

3. THIS Communion which the saints have with Christ, doth not make them in any wise partakers of the substance of his Godhead, or to be equall with Christ in any respect; either of which to affirm is impious and blasphemous: Nor doth their communion one with another as saints take away or infringe the title or propriety which each man hath in his goods and possessions.

#### CHAP. XXVII. OF THE SACRAMENTS.

1. SACRAMENTS are holy signs and seals of the Covenant of Grace, immediately instituted by God, to represent Christ and his benefits, and to confirm our interest in him; as also to put a visible difference between those that belong unto the church and the rest of the world, and solemnly to engage them to the service of God in Christ according to his word.

2. THERE is in every sacrament a spirituall relation or sacramentall union between the sign and the thing signified; whence it comes to pass, that the names & effects of the one are attributed to the other.

3. THE grace which is exhibited in or by the sacraments rightly used, is not conferred by any power in them; neither doth the efficacy of a sacrament depend upon the piety or intention of him that doth administer it, but upon the work of the Spirit, and the word of Institution, which contains, together with a precept authorizing the use thereof, a promise of benefit to worthy receivers.

4. THERE be only two sacraments ordained by Christ our Lord in the Gospell, that is to say, Baptism & the Supper of the Lord; neither of which may be dispensed by any but by a minister of the word lawfully ordained.

5. THE sacraments of the Old Testament, in regard of the spirituall things thereby signified and exhibited, were for substance the same with those of the New.

#### CHAP. XXVIII. OF BAPTISM.

1. BAPTISM is a sacrament of the New Testament, ordained by Jesus Christ, not only for the solemn admission of the party baptised into the visible church, but also to be unto him a sign and seal of the Covenant of Grace, of his ingrafting into Christ, of regeneration, of remission of sins, and of his giving up unto God, through Jesus Christ, to walk in newness of life; which sacrament is by Christs own appointment to be continued in his Church untill the end of the world.

2. THE outward element to be used in this sacrament is water, wherewith the party is to be baptized, in the name of the Father, and of the Son, and of the Holy Ghost, by a minister of the Gospell lawfully called thereunto.

3. DIPPING of the person in the water is not necessary; but baptism is rightly administred by pouring or sprinkling water upon the person.

4. NOT only those that do actually profess faith in, and obedience unto Christ, but also the infants of one or both believing parents are to be baptized.

5. ALTHOUGH it is a great sin to contemn or neglect this ordinance, yet grace and salvation are not so inseparably annexed unto it, as that no person can be regenerated or saved without it, or that all that are baptized are undoubtedly regenerated.

6. THE efficacy of baptism is not tied to that moment of time wherein it is administred; yet notwithstanding, by the right use of this ordinance, the grace promised is not only offered, but really exhibited and conferred by the Holy Ghost to such (whether of age or infants) as that grace belongeth unto, according to the counsell of Gods own will, in his appointed time.



7. THE sacrament of baptism is but once to be administred unto any person.

CHAP. XXIX. OF THE LORDS SUPPER.

1. OUR Lord Jesus in the night wherein he was betrayed, instituted the sacrament of his body and blood called the Lords Supper, to be observed in his Church unto the end of the world, for the perpetuall remembrance of the sacrifice of himself in his death, the sealing all benefits thereof to true believers, their spirituall nourishment and growth in him, their further engagement in and to all duties which they owe unto him, and to be a bond and pledge of their communion with him, and with each other as members of his mysticall body.

2. IN this sacrament Christ is not offered up to his father, nor any reall sacrifice made at all for remission of sins of the quick or dead, but only a commemoration of that one offering up of himself by himself upon the cross, once for all, and a spirituall oblation of all possible praise unto God for the same; so that the popish sacrifice of the Mass (as they call it) is most abominably injurious to Christs one only sacrifice, the alone propitiation for all the sins of the elect.

3. THE Lord Jesus hath in this ordinance appointed his ministers to declare his word of Institution to the people, to pray and bless the elements of bread and wine, and thereby to set them apart from a common to an holy use, and to take and break the bread, to take the cup, and (they communicating also themselves) to give both to the communicants, but to none who are not then present in the congregation.

4. PRIVATE masses, or receiving this sacrament by a priest or any other alone, as likewise the deniall of the cup to the people, worshipping the elements, the lifting them up or carrying them about for adoration, and the reserving them for any pretended religious use, are all contrary to the nature of this sacrament, and to the institution of Christ.

5. THE outward elements in this sacrament, duely set apart to the uses ordained by Christ, have such relation to him crucified, as that truly, yet sacramentally only, they are sometimes called by the name of the things they represent, to wit, the body and blood of Christ, albeit in substance and nature they still remain truly and only bread and wine as they were before.

6. THAT doctrine which maintaines a change of the substance of bread and wine into the substance of Christs body and blood, (commonly called transubstantiation), by consecration of a priest, or by any other way, is repugnant not to scripture alone, but even to common sense and reason, overthroweth the nature of the sacrament, and hath been, and is, the cause of manifold superstitions, yea of gross idolatries.

7. WORTHY receivers, outwardly partaking of the visible elements of this sacrament, do then also inwardly, by faith, really and indeed, yet not carnally and corporal-

ly, but spiritually receive and feed upon Christ crucified, and all benefits of his death, the body and blood of Christ being then not corporally or carnally, in, with, or under the bread and wine, yet, as really, but spiritually, present to the faith of believers in that ordinance, as the elements themselves are to their outward senses.

8. **ALTHOUGH** ignorant and wicked men receive the outward elements in this sacrament, yet they receive not the thing signified thereby ; but by their unworthy coming thereunto, are guilty of the body and blood of the Lord to their own damnation ; wherefore all ignorant and ungodly persons, as they are unfit to enjoy, communion with him, so are they unworthy of the Lords table, and cannot, without great sin against Christ while they remain such, partake of these holy mysteries, or be admitted thereunto.

#### CHAP. XXX. OF CHURCH CENSURES.

1. **THE** Lord Jesus, as King and head of his Church, hath therein appointed a government, in the hand of church officers, distinct from the civil Magistrate.

2. **TO** these officers the keys of the kingdom of heaven are committed, by virtue whereof they have power respectively to retain and remit sins, to shut that kingdom against the impenitent, both by the word and censures, and to open it unto penitent sinners, by the ministry of the gospell, and by absolution from censures, as occasion shall require.

3. **CHURCH** censures are necessary for the reclaiming & gaining of offending brethren, for deterring of others from the like offences, for the purging out of that leaven which might infect the whole lump, for vindicating the honour of Christ, and the holy profession of the gospell, and for preventing the wrath of God, which might justly fall upon the Church, if they should suffer his covenant and the sealls thereof to be profaned by notorious and obstinate offenders.

4. **FOR** the better attaining of these ends, the officers of the Church are to proceed by admonition, suspension from the sacrament of the Lords supper for a season, and by excommunication from the Church, according to the nature of the crime and demerit of the person.

#### CHAP. XXXI. OF SYNODS & COUNCILS.

1. **FOR** the better government and further edification of the Church, there ought to be such assemblies as are commonly called Synods or Councils.

2. **AS** Magistrates may lawfully call a synod of ministers, and other fit persons to consult and advise with about matters of religion ; so if Magistrates be open enemies to the Church, the ministers of Christ, of themselves, by virtue of their office, or they with other fit persons, upon delegation from their Churches, may meet together in such assemblies.

3. **IT** belongeth to Synods and Councils ministerially to determine controver-

sies of faith, and cases of conscience, to set down rules and directions for better ordering of the publick worship of God and government of his Church ; to receive complaints in cases of mal-administration, and authoritatively to determine the same ; which decrees and determinations (if consonant to the word of God) are to be received with reverence and submission, not only for their agreement with the word, but also for the power whereby they are made, as being an ordinance of God, appointed thereunto in his word.

4. ALL Synods or Councils since the Apostles times, whether generall or particular, may err, and many have erred ; therefore they are not to be made the rule of faith or practise, but to be used as an help in both.

5. SYNODS and councils are to handle or conclude nothing but that which is ecclesiasticall, and are not to intermeddle with civil affairs which concern the Commonwealth, unless by way of humble petition, in cases extraordinary, or by way of advice, for satisfaction of conscience, if they be thereunto required by the civil Magistrate.

CHAP. XXXII. OF THE STATE OF MEN AFTER DEATH, AND OF THE RESURRECTION OF THE DEAD.

1. THE bodies of men after death return to dust & see corruption ; but their souls (which neither die nor sleep) having an immortall subsistence, immediatly return to God who gave them : the souls of the righteous, being then made perfect in holiness, are received into the highest heavens, where they behold the face of God in light and glory, waiting for the full redemption of their bodies ; and the souls of the wicked are cast into hell, where they remain in torments and utter darkness, reserved to the judgement of the great day. Besides these two places for souls separated from their bodies, the scripture acknowledgeth none.

2. AT the last day, such as are found alive shall not die, but be changed, and all the dead shall be raised up, with the self same bodies, and none other, although with different qualities, which shall be united again to their souls for ever.

3. THE bodies of the unjust shall, by the power of Christ, be raised to dishonour ; the bodies of the just, by his spirit, unto honour, and be made conformable to his own glorious body.

CHAP. XXXIII. OF THE LAST JUDGEMENT.

1. GOD hath appointed a day wherein he will judge the world in righteousness by Jesus Christ, to whom all power and judgement is given of the Father. In which day not only the apostate angels shall be judged, but likewise all persons that have lived upon earth, shall appear before the tribunall of Christ, to give an account of their thoughts, words and deeds, and to receive according to what they have done in the body, whether good or evil.

2. THE end of Gods appointing this day is for the manifestation of the glory of

his mercy in the eternall salvation of the elect, and of his justice in the damnation of the reprobate, who are wicked and disobedient; for then shall the righteous go into everlasting life, and receive that fullness of joy and refreshing, which shall come from the presence of the Lord; but the wicked, who know not God and obey not the gospell of Jesus Christ, shall be cast into eternall torments, and be punished with everlasting destruction, from the presence of the Lord, and from the glory of his power.

3. AS Christ would have us certainly to be perswaded that there shall be a day of judgement, both to deter all men from sin, and for the greater consolation of the godly in their adversity; so will he have that day unknown to men, that they may shake off all carnall security, and be always watchfull, because they know not at what hour the Lord will come, and may be ever prepared to say, Come, Lord Jesus, come quickly, Amen.

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*ACT Ratifying the Confession of Faith & settling Presbyterian Church Government.*

7. OUR SOVERAIGNE LORD & LADY The King and Queens Majesties and three estates of Parliament, Conceiving it to be their bound duty, after the great deliverance that God hath lately wrought for this Church and Kingdom. In the first place to settle and secure therein the true protestant Religion according to the truth of Gods word as it hath of a long tyme been professed within this Land, as also the Government of Christs Church within this Nation agreeable to the word of God and most conducive to the advancement of true piety and Godliness and the establishing of peace and tranquillity within this Realme, And that by ane Article of the Claime of Right, It is declared that prelacie and the superiority of any office in the church above presbyters, Is and hath been a great and insupportable greivance and trouble to this Nation, and contrary to the inclination of the generality of the people ever since the reformation they haveing reformed from popery by Presbiters and therefore ought to be abolished; Lykeas by ane Act of the last Session of this Parliament Prelacie is abolished Therefore Their Majesties with advyce and consent of the saids three Estates Doe hereby revive, ratifie and perpetually confirme all lawes statutes and acts of Parliament made against popery and papists And for the maintenance and preservation of the true reformed protestant religion and for the true Church of Christ within this kingdom. In swa far as they confirme the same or are made in favours thereof; Lykeas they by these presents Ratifie and establish the Confession of Faith now read in their presence and voted and approven be them as the publick and avowed Confession of this Church containeing the summe and substance of the doctrine of the reformed Churches, which Confession of faith is subjoynd to this present Act: As also, They doe establish Ratifie and confirme the presbyterian Church Government and discipline That is to say the Government of the Church by Kirke sessions, presbyteries, provinciall synods and Generall assemblies ratified and established by the 114 Act Ja: 6: parl: 12: Anno 1592 Entituled, Ratification of the Liberty of the true kirke &c. And thereafter received by the generall consent of this Nation to

be the only government of Christs Church within this Kingdome Reviveing Renewing and Confirmeing the forsaid act of Parliament in the haill heids thereof, except that part of it relateing to patronages which is hereafter to be taken into consideration. And Rescinding, Annulling and makeing voyd the Acts of Parliament following viz Act anent restitution of Bishops; Ja. 6: Parl. 18. Cap. 2<sup>d</sup> Act Ratifieing the acts of the assembly 1610 Ja. 6. Parl: 21 Cap. 1<sup>st</sup> Act anent the Election of Archbishops and Bishops Ja: 6: Parl: 22: Cap. 1<sup>st</sup> Act Entituled Ratification of the fyve articles of the generall assembly at Perth Ja: 6: Parl: 23: Cap: 1<sup>st</sup> Act Entituled for the restitution and re-establishment of the Ancient Government of the Church by Archbishops and Bishops Char: 2: Par: 1<sup>st</sup> Sess: 2: Act 1<sup>st</sup>: Act anent the Constitution of a national synod Char: 2: Par: 1<sup>st</sup> Sess: 3<sup>d</sup>: Act 5<sup>th</sup> Act ag<sup>t</sup> such as refuse to depone against delinquents Char: 2: Par: 2<sup>d</sup>: Sess 2: Act 2<sup>d</sup> Act entituled Act acknowledging and asserting the right of succession to the Imperiall Crowne of Scotland Char: 2: Par: 3<sup>d</sup> act 2<sup>d</sup> Act entituled Act anent Religion and the Test Char: 2<sup>d</sup> Par: 3, Act 6<sup>th</sup> with all other Acts Lawes statutes ordinances and proclamations And that in sua far allennerly as the saids Acts and others generally and particularly above mentioned are contrary or prejudiciall to, Inconsistent with, or derogatory from the protestant Religion and presbyterian Government now established And allowing & Declaring that the Church Government be established in the hands of, and exercised by these presbyterian ministers who were outed since the first of January 1661 for nonconformity to prelacie, or not complying with the courses of the tyme, and are now restored by the late Act of Parliament; and such ministers and elders only as they have admitted or received or shall hereafter admitt or receave, and also that all the sd Presbiterian Ministers have and shall have right to the maintenance, rights and other priveledges by Law provyded to the ministers of Christs Church, within this kingdom, as they are or shall be legally admitted to particular Churches, Lykeas, In pursuance of the premisses Their Majesties doe hereby appoint the first meeting of the Generall assembly of this Church as above established to be at Edin<sup>g</sup> the third thursday of october nextcome In this instant yeare I<sup>m</sup> vj<sup>e</sup> nyntie, And becaus many conforme Ministers either have deserted or were removed from preaching in their Churches preceeding the 13 of April 1689, and others were deprieved for not giving obedience to the act of the Estates made the said 13 day of Apryle 1689; entituled Proclamation against the owneing of the late King James, and appointing publick prayers for King William and Queen Mary, Therefore, Their Majesties with advyce and consent forsaid doe hereby declare all the Churches either deserted or from which the conforme ministers were removed or deprieved, as said is, To be vacant; And that the presbyterian Ministers exerciseing their Ministry within any of these paroches (or where the last Incumbent is dead) by the desyre or consent of the paroch shall continue their possession and have right to the benefices and stipends according to their entry in the year 1689; and in tyme coming ay & while the Church as now established take further course therewith: And to the effect the disorders that have hapned in this Church may be redressed Their Majesties with advyce and consent forsaid Doe hereby allow the Generall meeting and representatives of the forsd presbyterian ministers and Elders in whose hands the exercise of the Church Government is established either by themselves or by such Ministers and elders as shall be appointed and authorised visitors by them, according to the custom and practise of Presbyterian Government throughout the whole kingdom and severall parts thereof, to try and purge out all Insufficient, negli-

gent, scandalous, and erroneous Ministers by due course of ecclesiasticall processes and censures, and likewyses for redressing all other Church disorders ; And further it is hereby provided that whatsoever Minister being conveyed before the said Generall meeting and representatives of the presbyterian ministers and elders or the visitors to be appointed by them shall either prove contumacious in not compearing or be found guilty, and shall be therefore censured whether by suspension or deposition they shall ipso facto be suspended from or deprieved of their stipends and benefices, And ordaines this Act to be printed and published.

16. *ACT Dischargeing Generall Letters of Horning.*

OUR SOVERAIGNE LORD & LADY the King and Queens Majesties Considering the great Inconveniencies that may arise to the Leidges by generall Letters of Horneing Therefore their Majesties with advice and consent of the three Estates of Parliament doe discharge and prohibite the granting raiseing and using generall Letters of Horneing, except for their Majesties Revenue, and for Ministers stipends upon decreits of Locality ; And declares that Generall Letters upon decreits for poynding of the ground may proceed as formerly.<sup>319</sup>

49. *ACT anent the Sale of Bankrupts Lands.*

OUR SOVERAIGNE LORD & LADY and Estates of Parliament Considering that by the 17<sup>th</sup> Act 3<sup>d</sup> Parliament King Charles Second entituled Act concerneing the sale of Bankrupts lands, It is statute that the Lords of sessione shall commissionate persones to sell the Lands and estates of Bankrupts with consent of the debtor where there is a legall reversione competent to him or without his consent where there is no legall, whereby the said usefull Act is made ineffectuall, no persons being willing to dispoise other mens Lands neither will the bankrupt ever consent with any such persone, ffor remeid whereof Their Majesties with consent of the saids estates, statute enact & Declare that the buyers of Bankrupts estates shall have Right thereto by the decreit of sale to be pronounced by the Lords Adjudging the Lands sold to the buyer for the pryce decerned, and that the buyer shall thereupon be infest in the same way as upon other adjudications, and that the sale may proceede so soone as it shall be found that the debtor is bankrupt and utterly insolvent, whether the Legall be expyred or not, And that if no buyer be found at the rate determined by the Lords, it shall be leisome to the saids Lords to divide the Lands and other rights amongst the Creditors according to their severall rights and diligences, And because the sale may be obstructed by donators of Liferent Escheit the saids Lords are hereby Impowered to determine the price and value of the saids liferent escheits and to sell Lands for the pryce thereof according as the saids Rights shall be found to have preference.<sup>320</sup>

53. *ACT concerning Patronages.*

OUR SOVERAIGNE LORD & LADY The King and Queens Majesties, Considering that the power of presenting ministers to vacant Churches of late exercised by Patrons, hath been greatly abused and is inconvenient to be continued

<sup>319</sup> In reference to this act, see Ersk. b. iv. tit. iii. § 11.

<sup>320</sup> In reference to this act, see note annexed to 1681, ch. 83 ; Bell's Com. vol. ii. p. 251, et seq. ; and 54th Geo. iii. ch. 137, § 7.

in this Realme Doe Therefore with the advyce and consent of the Estates of Parliament, heirby Discharge, Cass, annull, and make void, the aforesaid power heretofore exercised by any patrone, of presenting Ministers to any Kirke now vacant, or that shall hereafter happen to vaikie within this kingdome with all exercise of the said power, And also all rights, gifts, and infestments, acts, statuts and customes, In sua far as they may be extended or understood to establish the said right of presentatione, bot prejudice alwayes of such ministers as are dewly entered by the forsaid presentations, (while in use) their right to the Manse, gleib, benefice, stipend and other profites of their rex'ive Churches as accords, And but prejudice to the Patrons of their right to employ the vacant steipends on pious uses within the rex'ive parishes, except where the patrone is popish, In which case he is to imploy the same on pious uses by the advyce and appointment of the presbyterie And in case the patrone shall faill in applyeing the vacant stipend for the uses forsaid, that he shall lose his right of Administratiōne of the vacant stipend, for that and the next vacance And the same shall be disposed on by the presbyterie to the uses forsaid, Excepting alwayes the vacant stipends within the bounds of the synod of Argyle, And to the effect the calling and entering Ministers in all tyme comeing may be orderly and regularly performed, Their Majesties with consent of the Estates of Parliament, Doe statute and declare That in case of the vacancie of any particular Church and for supplyeing the same with a minister the Heretors of the said parish (being protestants) and the elders are to name and propose the persone to the whole congregatiōne to be either approven or disapproven by them, And if they disapprove, that the disapprovers give in their reasons to the effect the affair may be cognosced upon by the presbytery of the bounds at whose judgment and by whose determinatiōne the calling and entry of a particular Minister is to be ordered and concluded And it is heirby enacted that if application be not made be the eldership and heretors of the parish to the presbyterie for the Call and choice of a Minister within the space of six moneths after the vacancie, That then the presbyterie may proceed to provyde the said paroch, and plant a minister in the Church tanquam jure devoluto; It is alwayes hereby declared that this act shall be bot prejudice of the Calling of Ministers to Royall Burghs by the Magistrats, toune Counsell and kirke sessione of the burgh where there is no landward parish as they have been in use before the yeare 1660, And where there is a considerable part of the parish in Landward, that the call shall be by the Magistrats, Toune Counsell, Kirke sessione, and the heretors of the landward paroch, And in liew and recompence of the said right of presentatione heirby taken away Their Maties with advyce and consent forsaid, Statute and ordaine, the Heretors and liferenters of each paroch and the toune Councils for the burgh to pay to the said patrons betwixt and Martimas next the soume of six hundreth merkes proportionally effeiring to their valued Rents in the said parish viz two parts by the Heretors and a third part by the liferenters, deduceing alwayes the patrones owne part effeiring to his proportiōne as ane heretor, And that upon the said patrone his granting a sufficient and formall renunciatiōne of the said Right of presentatione in favours of the said heretors, Toune Council for the burgh and Kirke sessione And it is hereby declared That as to the parishes to which their Majesties have right to present upon payment of the said six hundreth merkes to the Clerke of the Thesaurie, Their Majesties shall be fully denuded of their right of presentatione as to that parish, And as to other patrons if they refuse to accept the said six hundreth merkes the same is to be consigned in the hands of a responsall per-

sone in the parish upon the hazard of the consigners, not to be given up to the patrone untill he grant the said Renunciations, Allowing in the mean tyme the heretors and kirke sessione to call the minister conforme to this Act, And ordaines Letters of horneing to be direct at the instance of the patrone against the heretors and others who shall not make payment of the said six hundreth Merkes, after the said terme of Martimas next, and likewayes at the instance of the heretors and others willing to pay against these who are unwilling, And in case the patrone be unwilling to accept the said soume, or the heretors and others aforesaid unwilling to pay Ordaines Letters of horneing to be direct at the instance of their Majesties solicitor against either of them, And further their Majesties with advyce and consent forsaid, statute enact and declare, that the Right of the Teinds of the said parishes which are not heretably disposed, shall be vertue of this present Act belong to the said patrons, with the burden alwayes of the Ministers stipends tacks and prorogations already granted of the said teinds and of such augmentations of stipends, future prorogations and erections of new kirkes, as shall be found just and expedient, Provying the saids patrons, getting right to the teinds be vertue of this present Act, and who had no right thereto of before shall be, Lykeas they are heirby obleidged to sell to each heretor the teinds of his owne Lands at the rate of six yeares purchase, as the same shall be valued by a Commissione for valuations of Teinds, And whereas there are certaine lands and annuellrents holden of the saids benefices and beneficed persones, from which the patrons might have some benefite arysing to them, It is hereby ordained That the right of superioritie of the saids Lands and arents shall belong to their Majesties in all tyme comeing, with all the whole casualities and emoluments thereof notwithstanding of any former act of Parliament in the contrair Reserveing notwithstanding to the patrons the few fermes and few maills of the said superiorities, ay and while they receive payment and satisfactions from their Majesties of the pryce thereof at the rate of 1000 merkes for each Chalder of victuall overhead, and for each hundreth Merkes of few Maill, except where the said few fermes are a part of the ministers modified stipend, or where the minister is or hes been in possessione thereof by the space of ten yeares, or where he hes the full benefice, In which cases they are to be irredeimable, Excepting lykewayes from this Act the superiorities belonging to the Deanrie of Hamiltone, and the provostrie of Bothwell, whereunto the Duke of Hamiltone hes right which are noewayes hereby prejudged.<sup>321</sup>

#### 56. *ACT anent the Confirmation of Testaments.*

OUR SOVERAIGNE LORD & LADY The King and Queens Majesties, and three Estates of Parliament Considering the great vexatione occasioned to their Majesties Leidges, by Commissars and their Clerkes fiscalls and officers, chargeing them to confirme the Testaments of their deceast Relations Doe hereby discharge and forbid in all tyme comeing, all Commissars and their fiscalls Clerkes and officers, to Charge pursue or require any persones to confirme the Testament, or give up Inventory of the goods of any other person defunct except at the instance of the Relict bairnes, nearest of Kin and their Tutors and Curators or of a Credi-

<sup>321</sup> This is a very important act in connection with the history of Church Patronage in Scotland. So far as it effected a change in the former law of patronage, it was subsequently repealed by 10th Anne, ch. 12; and so far as it relates to the application of vacant stipends, it was superseded by 54th Geo. III. ch. 169, a local and personal act.



tor Declareing all charges pursuities and executions otherwise made and given to be void and Null And farder Their Majesties with consent forsaide, Declare that where speciall assignations and dispositions are lawfully made by the defunct, tho neither intimate nor made publick in his lifetime they shall be yet good and valid rights and titles to possess bruike, enjoye, pursue or defend, Albeit the soumes of money or goods therein contained be not confirmed without prejudice alwayes to the competition of Creditors and others and of their rights and diligences as formerly before the making heirof.

*59. ACT anent the Superiority of Lands & others which formerly held of Prelates or Bishops and their Chapters to be now holden of the King and Queen.*

THE KING & QUEENS MAJESTIES Considering that by the declaration of the states of this Kingdome Containeing the Claime of Right and the offer of the Crowne to their Majesties of the date the eleventh day of Aprile 1689 yeares, Prelacie and the superiority of any office in the Church above Presbyters is and hath been an unsupportable grievance and trouble to this Natione and contrary to the inclinationes of the generalitie of the people ever since the reformatione (They haveing reformed from popery by Presbyters) and therefore ought to be abolished ; Lykeas in pursuance of the said Declaratione, Their Majesties with advyce of the Estates of Parliament by ane Act of the [twenty second] day of [July 1689 yeares] Have Abolished the office of Bishops or Prelates out of this Kirke and Kingdome, Therefore for removeing of all doubts and questions that may arise anent the superiorities of these Lands, milnes, fishings, heretable offices and others which formerly held of the Prelates or Bishops or of their Chapters or of Deanes, Subdeanes and Archdeanes or any other beneficed persone by reasone of the abolishing of the saids offices and Chapters forsaide furth of this Kirk and Kingdome And to the effect the subjects and vassalls of these holdings may be put in assurance hereanent Have statute, ordained and declared and by thir presents statute, ordaine & declare That all these superiorities which formerly pertained to the saids Prelates and Bishops and their Chapters or Deanes and others forsaids Doe now pertain and belong and shall hereafter pertaine immediately to their Majesties and their Successors in all tyme comeing, And that the vassalls of these Lands milnes fishings heretable offices and others, which formerly held Immediately of the saids Prelates Bishops and their Chapters, deanes and others forsaids, Doe now and shall in all tyme comeing, hold the samine immediately of their Majesties and their successors in the samen forme and manner of holding as they formerly held of the saids Prelates, Bishopes, and their Chapters, Deanes and others forsaids, conforme to the saids vassalls their infetments and rights made and pertaineing to them, which are hereby Declared to be unprejudged by the abolishing of the saids Prelates, Bishops and their Chapters and others their former superiors, And sicklike Their Majesties and Estates of Parliament, Declare all these services of aires to their defunct predecessors to any of the Lands and others holding of the saids Prelates or Bishops Deanes and others foresaids (since they were abolished) whereby these aires are served to these Lands To be holden of their Majesties to be valide and lawfull services and rights led and done, And Ordaines all such services as are to be led and deduced hereafter for serveing of the aires of the vassalls of the Lands and others forsaids as aires in the samen lands to be served heirs theirintill, To be holden immediately of their Majesties and their successors forsaids as their superiors of the samen lands and others above mentioned in all tyme comeing, And It is hereby declared that it shall

not be leisome to Interpose any other superior betwixt their Majestys and any of these vassalls who are hereby ordained to hold immediatly of their Majesties in manner forsaid ; And if any persone doe in the contraire, all such deeds are hereby declared to be void and Null even albeit the Vassall should consent thereto.

61. *ACT in favours of the small vassals of Kirklands who now hold of their Majesties.*

OUR SOVERAIGNE LORD & LADY The King and Queens Majesties takeing into their Consideratione that many of the vassalls of Bishops and other kirkmen who now hold their lands immediatly of their Majesties have such small portions of Lands that they are not able to be at the expence of expeding their infestments ; For Remeid whereof their Majesties with advyce and consent of the Estates of Parliament, doe statute and ordaine that the signatures and Charters of all vassalls of Kirklands whose valuation is but ane hundreth pundis Scots or under being above ten pounds shall be past and exped throw the Registers and sealls for payment of ten pounds scots allennerly, for fees in the Exchequer, dues at the signet and sealls, drink money or any other duty or fee whatsoever, And that the signatures and Charters of such vassalls whose valuatione is but two hundreth pounds scots or under, being above one hundreth pounds shall be past and exped throw the Registers and sealles for payment of fiftain pundis Scots allennerly for fees in the Exchequer dues at the signet and sealls drinke money or any other dutie or fee whatsoever, And that they shall be free of paying a Seasing Ox to the sheriffe, And the dues to bee payed by them to the sheriffes for Æquees shall not exceed the twentieth part of their few dewtie, And where the vassalls of Kirklands their valuations is only ten pundis Scotts or under that their Charters shall pass the great seall per saltum without passing any other seall and that gratis without payment of any money for Compositione in the Exchequer or other dewes, And as to vassalls of Kirklands in Orkney and Zetland where their valuatione does not exceed twenty pounds Scotts, It is hereby declared that they shall bruike by the Udall Right without necessitie of Renovatione of their Rights and Infestments.<sup>322</sup>

63. *ACT & Commission for Plantation of Kirks & Valuation of Teinds.*

FORASMUCH as for the Maintenance and provisione of the Ministry and Churches within this Kingdome, and for preventing and settleing of differences that did or might arise betwixt Titulars and others haveing right to teinds, and heretors concerneing the leading and drawing of their teinds, diverse lawes and Acts of Parliament were made in the yeare of our Lord 1633 And since that tyme diverse Acts of Parliament and Commissions have been renewed and given to that purpose, And their Majesties being resolved and desyreous to prosecute so good a worke for the universall good of their subjects and especially for the encouragement of the Ministers of the gospell Therefore Their Maties with advyce and consent of the Estates of Parliament, Gives full power and Commissione to his Majesties officers of state for the tyme being, and to the Earles of Argyle, Crawford, Sutherland, Cassills, Lothian & Levin, The Viscount of Staire The Lords Cardross and Ruthven, Sir Patrick Hume of Polwart, the Laird of Lamingtonne, Alexander Monro of Beircrofts The Lairds of Grant and Brody, Sir Thomas Burnet of Leyes, Sir John Maxwell Sir Archibald Murray of Blackbarony and Mr Francis

<sup>322</sup> In reference to this act, see Erskine, b. iii. tit. viii. § 79.

Montgomery of Giffin, Sir John Hall of Dunglass, John Muire Provost of Aire, Alexander Spittle of Leuchett, Master John Murray Advocate, Mr James Smollet Provost of Dumbartoune, Sir Thomas Stewart, Sir James Ogilvie of Churchill advocate, Sir William Hamiltone advocate and Sir Patrick Murray of Saltcoats or any nyne of them to be a Quorum whereof two of every state with one of the officers of state to meet and convene at Edinburgh the second wednesday of November nextcome and such other place or places tyme or dyets as they shall appoint, to value and cause to be valued, whatsoever teinds great or small personage or viccarage within this kingdome which are yet unvalued, and whither the same be in the hands of or in use to be drawne by titulars, tacksmen, ministers or any other whatsoever pretending right to other mens teinds, Declareing that in all cases the heretor shall have a joynt probatione, and that where the viccarage of any paroch is a severall benefice and title from the parsonage, the same shall be severally valued, to the effect the titulars or ministers serving the Cure haveing right to the said vicarage be not frustrate of the true worth thereof With power to the said Commissioners or Quorum foresaid to appoint Cōmitties or sub Cōmitties of their owne number and to grant Commissione and to receive reports from them, and to approve or disapprove the samen as they shall finde just; And to rectifie whatsoever valuations led or to be led to the enorme prejudice either of the heretors or of the titulars or to the hurt and detriment of the Church and prejudice of the ministers maintenance and provisions, Provydeing alwayes, Lykeas it is hereby expressly provyded and declared, That where valuations are lawfully led against all persons haveing interest and allowed by former Commissions, the same shall not be drawne in questione nor rectified upon pretence of enorme lesione at the instance of the Minister (not being titular) or at the instance of his Majesties advocate in respect of his Majesties Annuity except it can be proven that collusion was used betwixt the titulars and heretors or betwixt the p<sup>r</sup>or fiscall and the Heretors and titulars, which collusion is declaired to be when the valuations are led with the diminution of the third part of the just Rent which was payable the tyme of the valuatione, which diminutione shall be proven by the parties oath, And with power to the saids Commissioners or quorum foresaid where ministers are not already sufficiently provyded or have not locality already assigned to them for their stipends out of the teinds within the paroches where they serve the Cure according to the quantities proportiones and rules contained in the 19<sup>th</sup> act of the Parliament 1633, to modifie settle and appoint constant locall stipends to each minister out of the teinds of the paroch where they serve the Cure with power also to the saids Commissioners to grant recompence by prorogation of Tacks to parties for all augmentations of stipends, which are granted since the year 1630 or shall be granted and that effeiring to the augmentations already granted or to be granted as the saids Commissioners shall thinke fitt, And Sicklike to disjoyne too large and spacious paroches, to cause erect and build new Churches to annexe and dismember Churches as they shall thinke convenient, and to take order that every heretor and liferenter shall have the leading and buying of their owne teinds if they be willing according to the rules prescribed by the 19<sup>th</sup> Act and Commissione granted by his Majestie with consent of the Estates of Parliament in anno 1633 and the Acts of Parliament therein mentioned extending the same to all teinds except such as belong to and are possesst be Ministers for their stipends and provisions which are only to be valued but not to be sold or bought, with power to determine all questions concerning the pryces of teinds betwixt titulars and others haveing right thereto and

the heretors, And to appoint such securities in favours of titulars and others having right to teinds for their pryces to be granted by the heretors and others lyable in payment of valued duties or buyers of the saids teinds, and in favours of the Ministers as to their maintenance as the saids Commissioners shall thinke fitting according to the rules set downe in the said act 1633, And each heretor whose teinds belongs to titulars of Ereccion or to patrons according to the Act made in this Parliament or to any other having right thereto by infeftment tack or other-ways not being both minister and titular to have power and liberty to buy the teinds of his owne Lands whether valued or not, from the saids titulars, patrons, tacksmen and others having right thereto according to the rates formerly appointed, and the nature and value of the sellers right to be determined by the Commissioners abovespe<sup>d</sup> it, And generallie with power to the saids Commissioners to decyde and determine in all other points which may concerne the drawing or leading of Teinds, the valueing selling or buying of the same or payment of the Rates thereof, And if any person or persons shall finde themselves grieved and complaine of the injustice or exorbitancie of any decreit or sentence already given in any of the former Commissions; with power to the saids Commissioners to take the same into their consideratione, and alter annull, or allow the saids decreits and sentences as they shall find just And it is alwayes provyded and declared that the Ministers of the gospell and their successors shall not be prejudged of the stipends either at present possess be them or already modified or to be modified to them according to the Rates above mentioned. And whereas it may fall out That some of the Commissioners may be unable to attend the service throw death sickness or other knowne impediment, Therefore their Majesties declare That they shall be cairfull to fill their places with other persones qualified whose oaths for faithfull discharging of the same shall be taken by the Lord Chancellor or in his absence by the Lord President of the Commissione for the tyme, And ordaine this present Commissione to endure ay and while the same be discharged be their Majesties, and the Acts decreits and sentences theirow to have the force strenth and effect of a decreit or sentence of Parliament And the Lords of Session to grant letters of horneing, poynding and others necessary to be direct upon the saids decreits and sentences in manner contained in the forsaid Commissione, And their Majesties with consent forsaid hereby discharges all former Commissions declareing the same to be expyred.<sup>323</sup>

96. *ACT anent the retoured duty of Annualrents.*

OUR SOVERAIGNE LORD & LADY Considering that infeftments of annualrents which ordinarily are granted to Creditors for security of sowmes of money are retoured to be worth the full value of the annualrent and thereby superiors doe acclaime the full annualrent as the retour duty, dureing the non entry as well before as after declarator which is a grievous and heavy burden to the aires of Creditors Therefore Their Majesties with consent of the Estates of Parliament Doe Statute Enact and declare that in all tyme comeing annualrents shall only be retoured to the blench duty or other duty contained in the heretable bond or infeftment of annualrent, and that no actione of speciall declarator at the instance of any superior of ane annualrent shall be sustained further then for the blench or other duty contained in the bond or Infeftment of Annualrent, until citatione in the generall declarator.<sup>324</sup>

<sup>323</sup> See note annexed to 1617, ch. 3.

<sup>324</sup> In reference this act, see Ersk., b. ii. tit. v. § 38.

98. *Act anent Removing from Land.*

OUR SOVERAIGNE LORD and LADY and the Estates of Parliament Considering the inconveniency arising from the uncertainty of the terme of whitsonday, whereby the Indurance of the two ordinar termes of Whitsonday and Martimass is soe unequall, and whitsonday ofttimes reaching far in Summer by the Removeing from Lands at that tyme these who remove doe eat up and destroy the meadowes and hained ground; For Remeed whereof Their Majesties with consent of the saids Estates of Parliament doe statute and ordaine that the summer and winter termes shall in all tyme comeing be the ffifteynth day of May and Martimass; And that the legall terme of removeing both in burgh and Landward shall be the said ffifteynth day of May upon warneing fourty days preceeding the same.

## APUD EDINBURGH,

III DIE SEPTEMBRIS A. D. M,DC,XC.

PARLT. 1st. SESS. 3d.

3. *ACT against Robbing of the Pacquet.*

OUR SOVERAIGNE LORD & LADY Considering the great advantage that doth arise to the publick service and private Interest of Commerce from the quick and safe dispatch of Letters and publick orders by the Common post either from this kingdome, or to the same from England or Ireland or from one part of the kingdom to another, And that the robbing or seaseing the Common post maill or pacquett or any other expresses is a notorious kinde of Robberie and most prejudiciall to the Government and Commerce of the kingdome Therefore Their Majesties with advyce and consent of the Estates of Parliament doe declare that the robbing or seazeing the Maill or pacquett or the Letters and dispatches goeing or comeing by the Common post or any other expresses as aforesaid is Robberie and shall be punished with death and confiscations of Moveables.<sup>225</sup>

## APUD EDINBURGH,

XVIII DIE APRILIS, A.D. M,DC,XCIII.

PARLT. 1st. SESS. 4th.

21. *ACT concerning Citations to the first and second Dyets.*

THEIR MAJESTIES with advice and consent of the Estates of Parliament, ffor the greater Dispatch and facilitateing of processes Doe hereby Rescind that Clause in the Act of Parliament, One thousand Six hundred seventy two, Entitled Act Discharging Second Summonds, which requires the second Citation to be given after the Elapsing of the first Dyet of Compeareance And Declare That in all time comeing, It shall be lawfull to give Citation for the first and second Dyets of Compeareance at one and the same time Provdyng That the same be done by a messenger at Arms, as was the use of Summonds for the second Dyet, And further It is hereby expressly provyded That all Copies of Summonds, Charges, Inhibitions, Arrestments or other Letters whatsoever given to the Party

<sup>225</sup> In reference to this act, see Hume, vol. i. p. 80-1.

shall bear at length and not in figures, the day and date of the delivery thereof, As also the names and designation of the Witnesses, in such sort, as the Execution and Indorsation did and doth bear the same, Certifyeing the Messenger who who shall omitt to insert the said day and date and witnesses in his Copy that he shall incurre deprivation and tinsell of his Office.<sup>229</sup>

22. *ACT concerning the preference of Real Rights.*

OUR SOVERAIGNE LORD and LADY The King and Queens Majesties, for the better clearing and determining of Competitions and Preferences of Reall Rights and Infestments Do hereby with advice and consent of the Estates of Parliament Enact Statute and Declare, That All Infestments whether of property or annual-rent, or other Reall Rights, wherupon Sasines for hereafter shall be taken, shall in all Competitions be preferable and preferred, according to the date and priority of the Registration of the Sasines, without respect to the distinction of Base and publick infestments, or of being clad with possession, or not clad with possession in all time comeing.

23. *ACT concerning the Registers of Sasines, Reversions &c.*

OUR SOVERAIGNE LORD and Lady The King and Queens Majesties Considering That the many good Acts appointing Registers of Sasines, Reversions, Hornings, Inhibitions, Interdictions, Allowances of Apprizings or Adjudications, that Purchasers and Creditors might know with whom they might safely contract have been much frustrated by the Keepers of the Registers not inserting the same in the Registers at the time, and in the order they were presented to them, whereby none could know by inspection of the Registers, what Writs appointed to be registrate were in the hands of the Keepers of the Registers, and thereby could not securely bargain. For Remeed whereof their Majesties with advice and consent of the Estates of Parliament Doe Statute and Ordain That all the Keepers of the said Registers, shall keep Minute Books of all Writs presented to them to be registrate in their severall Registers Expressing the day and houre when, and the names and Designations of the persons by whom the saids Writs shall be presented, and that the said minute be immediately signed by the presenter of the Writ and also by the Keeper and patent to all the Lieges who shall desire Inspection of it gratis, And that the Writs shall be registrate exactly, conform to the Order of the said Minute Book, All under the pain of Deprivation of the Keeper of the Register. And further Their Majesties with consent forsaid Declare the said, Keepers not observing the premisses lyable to the damage of the Parties prejudged by the not due observing of this present Act.

24. *ACT for Summar Registrations and Discharging Transferrings activè.*

OUR SOVERAIGNE LORD and LADY The King and Queens Majesties, with Advice and Consent of the Estates of Parliament Statute and Declare, That all Writs registrable may be registrate after the death of the Creditor at the Instance of his Heir Executor or Assigney, as well as of before, and that upon production of a Service or Retoure in the case of Bonds or other Writs heretable, or of a Confirmed Testament, containing the Bond or other Writ, In case they be moveable, or of ane speciall Assignation, tho not Intimate, In the case of either, which Registration shall have the same effect, both as to probation and summar Execution, as if the Creditor were still on life, And farther It is Statute, That if it shall happen the pursuer to decease at any time dureing the dependence of any

<sup>229</sup> See 6th Geo. IV. ch. 120, § 53, which makes it imperative to summon on one diet only.

process raised at his instance, there shall be noe need for hereafter for his Heir Executor or Assigney to raise and obtaine a transferring activè but the said Heir, Executor or Assigney is hereby allowed, upon production of his Service or Retour, Confirmed Testament or Speciall Assignment, tho not intimate, to insist in the principall Cause sicklike in all respects, as the Pursuer, at whose Instance the process was raised might do, if he were still on Life but prejudice to Transferrings passivè, conform to the former practique as accords.

38. *ACT for Settling the Quiet & Peace of the Church.*

OUR SOVERAIGNE LORD and LADY The King and Queens Majesties, with Advice and Consent of the Estates of Parliament Ratify Approve and perpetually Confirme the fyfth Act of the Second Session of this Current Parliament, Entituled Act Ratifying the Confession of Faith, and Settling Presbyterian Church Government In the whole Heads Articles and Clauses thereof And do further Statute and Ordaine that no person be admitted or continued for hereafter to be a minister or preacher within this Church, unless that he having first taken and Subscribed the Oath of Allegiance and Subscribed the Assurance in manner appointed by another Act of this present Session of Parliament made thereanent Do also subscribe the Confession of Faith Ratified in the forsaid fifth Act of the Second Session of this Parliament, Declaring the same to be the Confession of his Faith, and that he owns the Doctrine therein contained to be the true Doctrine, which he will constantly adhere to, As likewise that he owns and acknowledges Presbyterian Church Government as settled by the forsaid fifth Act of the Second Session of this Parliament to be the only Government of this Church, And that he will submitt thereto and concurre therewith, and never endeavour directly or indirectly the prejudice or subversion thereof And their Majesties, with Advice and Consent forsaid Statute and Ordain that Uniformity of Worship, and of the Administration of all publick Ordinances within this Church be Observed by all the saids Ministers and Preachers as the samen are at present performed and allowed therein, or shall be hereafter Declared by the Authority of the same, And that no Minister or preacher be admitted or continued for hereafter, unless that he subscribe to observe and do actually observe the foresaid Uniformity. And for the more effectuall Settling the quyet and peace of this Church The Estates of Parliament Doe hereby make an humble Address to their Majesties, that they would be pleased to call ane Generall Assembly for the Ordering of the Affairs of the Church And to the end that all the present Ministers possessing Churches, not yet admitted to the exercise of the foresaid Church Government conform to the said Act, and who shall qualify themselves in manner forsaid, and shall apply to the said Assembly or the other Church Judicatures competent in ane orderly way each man for himself, be received to partake with them in the Government thereof Certifying such as shall not qualify themselves and apply to the said Assembly or other Judicatures within the space of thirty days, after meeting of the said first Assembly in manner forsaid, that they may be deposed by the Sentence of the said Assembly and other Judicatures tam ab Officio quam a Beneficio And withall Declaring that if any of the saids Ministers, who hath not been hitherto received into the Government of the Church shall offer to qualify themselves and to apply in manner forsaid they shall have their Majesties full protection, ay and while they shall be admitted and received in manner forsaid Provydeing alwayes that this Act and the benefite thereof shall no ways be extended to such of the saids Ministers as are scandalous, erroneous, negligent, or insufficient, and against whom the same shall be verified within the space of thirty days after the said application, but these and all others in like manner guilty are hereby Declared to

be lyable and subject to the power and censure of the Church as accords And to the effect that the Representation of this Church in its Generall Assemblies may be the more equall in all time coming Recommends it to the first Generall Assembly that shall be called to appoynt Ministers to be sent as Commissioners from every Presbytrie not in equall numbers which is manifestly unequall where Presbyteries are so, but in a due proportion to the Churches and Parochines within every Presbytrie as they shall judge convenient And it is hereby Declared that all Schoollmasters and Teachers of Youth in Schoolls are and shall be lyable to the tryall judgement and censure of the Presbyteries of the Bounds for their sufficiency qualifications and deportment in the said Office And lastly Their Majesties, with Advice and Consent forsaid Doe Hereby Statute and Ordaine that the Lords of their Majesties Privy Councill and all other Magistrates Judges and Officers of Justice give all due assistance for makeing the Sentences and Censures of the Church and Judicatures thereof to be obeyed, or otherways effectuell as accords.

39. *ACT Renewing the Commission for Plantation of Kirks & Valuation of Teynds.*

OUR SOVERAIGNE LORD and LADY The King and Queens Majesties Considering that by the thirtieth Act of the Second Session of this current Parliament, there was a Commission granted for Plantation of Kirks and valuation of Teynds which not being as yet made effectuell Therefore the King and Queens Majesties with advice and consent of the Estates of Parliament Ratifies and Renues the said Commission, with the whole power thereby granted to the Commissioners therein named, with three to be added of every Estate by their Majesties nomination makeing in all Thirty six, besides the Officers of State, who are Supernumerary, and any twelve of them to be a Quorum, whereof two of every Estate with one of the Officers of State And Confirms the whole tenor and effect of the forsaid Commission in manner and to the end specified in the said Act, with this Addition, that whereas there is a great difference as to Teynds, whereof the right has never come in the person of the Heritor of the Lands, and those Teynds whereof the right has come in the person of the Heritor and the lands thereafter sold or ffueed out by the Heritor, Reserving the Teynds, or where the Teynds are not disposed, that in such a case the Heritor who sold or ffueed out the Lands, should no more be obliged to sell those Teynds than a Superior, or other Heritor can be obliged to sell his ffue duties, or any other right of property that he has reserved, when he sold or ffueed out the Lands Therefore It is Statute and Ordained, that this Commission shall not be extended, as to the selling or buying of such Teynds, whereof the right has once been in the person of the Heritor of the Lands, and which Lands were thereafter sold or feued out by the Heritor with the reservation of the right of the Teynds, or without Disponing of the said Teynds, without prejudice always to the Vassall or Heritor of the Lands to value these Teynds in the termes of the said Act and Commission, and only be lyable thereafter for payment of the valued Duties, As also It is Declared, that the said Commission shall not be extended to the buying or selling of Teynds, which formerly pertained to the Bishops and now belong to their Majesties by the abolition of Prelacy, so long as the said Teynds shall remain in their Majesties hands undisposed, nor to Teynds belonging to Colledges and Hospitalls, or mortified or destinate for pious uses, without prejudice to value the saids Teynds conform to the forsaid Act, and be only lyable thereafter for payment of the valued Duties And because the buying of Teynds in favours of Heritors hath been much hindered by Patrons Titulars and Tacksmen of Teynds their offering to allocate



the Teynds of the Heritor pursueing for a Sale after Citation given It is hereby Statute and Ordained that after Citation, it shall not be in the power of the for-said Patrons Titulars or Tacksmen to make any Allocation of the pursuers Teynds solely but only proportionally of his and the other Teynds within the parochie and within his right Excepting allways that the Teynds of the Lands belonging in property to the Patron, Titular or Tacksman, shall be free of any parte of the said Allocation, if there be sufficient Teynd beside. And whereas many tymes Heritors intent Action for the valuation of their Teynds against the Titulars, and others having right thereto, of designe only, that upon pretence of ane depending Action for valuation, they may get a Warrant for leading of their own Teynds, and thereafter suffers the Action for valuation to lye over and doe not insist therein, by which the Titulars and others having right to the Teynds are exceedingly prejudged For Remeed whereof It is Statute and Ordained that any Warrant to be granted hereafter by the Commission to Heritors for leading of their Teynds, shall endure only untill a protestation for not insisting be obtained at the Instance of the Defender. And it being fitt and convenient that the time of the sitting of the Commission be limited and fixed to a time, that the Lieges may not be obliged to ane uncertaine attendance Therefore It is Statute and Ordained that the Commission shall meet and sitt down the first Wednesday after the sitting down of the Session, and thereafter shall meet every Wednesday weekly in the Afternoon dureing the sitting of the Session, till the first Wednesday after ryseing thereof inclusive, and so to continue their meetings yearly dureing the standing of this Commission But Declares that the Commission shall not meet in the vacance time, after the first Wednesday next and immediately following the ryseing of the Session, nor is the Commission to meet upon any other days or any other Dyets than is allowed by this present Act, and the first Dyet of meeting of the said Commission shall be the first Wednesday of November in this instant yeare One thousand Six hundred Nynty three And seing it is very inconvenient for Parties Advocates and others to attend the Commission at the Lower Town Councill house, where the Commission has been ordinarily in use to sitt these yeares bypast, Therefore Ordains the Commission to sitt in the Inner Session House, where parties Advocates and all others concerned may the more conveniently attend And Their Majesties Declare that they will fill the places of any of the Commissioners that are deceased or advanced to another State, or shall happen to dye or be advanced to another State dureing the standing of this Commission, with other persons sufficiently qualified, whose Oaths for the faithfull dischargeing of their offices shall be taken by the Lord Chancellor and in his absence by the President of the Commission for the tyme.<sup>327</sup>

40. *ACT anent the Term of Whitsunday.*

OUR SOVERAIGNE LORD and LADY The King and Queens Majesties with advice and consent of the Estates of Parliament for further clearing the Thirty nynty Act of the Second Session of this current Parliament Statute and Declare that the Fifteenth day of May was since the date of the forsaid Act, and shall be in all time comeing in place of the former Terme of Whitsunday, to all effects whatsoever, as well as to Removeings.<sup>328</sup>

41. *ACT anent Parsonages.*

OUR SOVERAIGNE LORD and LADY The King and Queens Majesties Considering that by the Twenty third Act of the Second Session of this current

<sup>327</sup> See note annexed to 1617, ch. 3.

<sup>328</sup> The act here referred to is 1690, ch. 98.

Parliament concerning Patronages, It is Statute and Declared, that the right of the Teynds of paroches, whereof Patrons had formerly the presentation by that Act abolished, and which Teynds are not heritably disposed, should by virtue of that Act belong to the Patrons, with the burthen always of the Ministers Stipends, and others therein expressed and that it is just and reasonable that the said benefite should be extended to the Patrons of all Parsonages and other Benefices without exception. Doe Therefore, with advice and consent of the Estates of Parliament Statute Ordaine & Declare that the forsaid right of the Teynds granted to Patrons as said is, shall be extended to the Teynds of all Parsonages and other Benefices and that the same shall belong to the Patrons, with the burthen specified in the said Act, and further with the burthen of provisions to two Ministers in one parochie, if the Commission shall think fitt. Providing always that where the beneficed person being a Minister having a Cure, is in possession of the forsaid Teynds as Titular thereof, he shall continue and remain in the possession thereof, ay and whill the forsaid Patrone shall obtain a just and reasonable Stipend to be modified and settled upon him by the Commission for Plantation of Kirks in lieu of his said right to the Teynds hereby granted to the Patrone as said is : which right shall be without prejudice of any other separate right, that the saids Patrons either have or may have to the saids Teynds, as accords of the Law.

42. *ACT anent the Lords of Session their Advising with open doors.*

OUR SOVERAIGNE LORD and LADY The King and Queens Majesties Considering that the Adviseing of Causes with open Doors is usuall in the Sovereigne Judicatories of other Nations, and that the like practice here will be of advantage to the Lieges Doe with advice and consent of the Estates of Parliament Statute and Ordaine That in all tyme comeing, all Bills Reports Debates Probations and others relating to processes shall be considered, reasoned advised and voted by the Lords of Session with open doors where parties procurators and all others are hereby allowed to be present, as they used to be formerly in time of Debates but with this restriction, that in some speciall cases the saids Lords shall be allowed to cause remove all persons except the parties and their procurators, and that no person presume to speake after the Lords begin to advise under the pain of imprisonment, unless he be desyred by the Lords and hereby Casses and Annuls all former Laws and Acts of Parliament appointing or allowing the Lords to advyse with close Doors.

43. *ACT anent Advising Criminal Processes with open doors.*

THE KING and QUEENS MAJESTIES and Estates of Parliament Considering that by the Nyntieth Act Parliament Eleaventh King James the Sixth, It is Statute Declared and Ordained, that the hail Accusation, Reasoning, Writes, Witnesses and other Probation and Instruction whatsoever of the cryme shall be alledged reasoned and deduced to the Assize in the presence of the party accused in face of judgement and no otherways. And it being fitt and convenient for the Lieges, that Criminal Tryalls, which are of so great import be solemne and public Doe Therefore Statute and Ordaine that after the Debate concerning the Relevancie of Criminall Lybells, Dittays, or Exculpations made by the parties and their procurators are closed, that the Commissioners of Justiciary and other Criminal Judges shall advyse the same, with open Doors, in presence of the Pannell and Assyse and all others ; and that no person, nor persons presume to speak, unless he be desyred or interrupt or disturb the Court by noyse or any other manner of way under the pain of being sent to prison and ffyned at the Judges discretion, as they shall think fitting, any Law or Custome to the contrair hereof notwithstanding.

standing Declaring always, that in cases of Rapt, Adulterie & the like the saids Commissioners may continue their former use and custom, by causing remove all persons, except parties and procurators, at the leading of the probation, as they shall see cause.

45. *ACT anent the Common Good of Royall Burrowes.*

OUR SOVERAIGNE LORD and LADY the King and Queens Majesties Considering that the Royall Burroughs of the Kingdome erected and provyded with their respective publick Goods and Revenues by their Majesties Royall Ancestors, are of late through the male-administration of the Magistrates and others, to whom the Management of the said publick Goods and Revenues hath been committed, fallen under great debts and burthens to the diminution of the dignity of Estate of Burroughs, and the disabling them to serve the Crowne and Government as they ought, and that the Care, Oversight and Controll of the said publick Goods and Revenues and of the Administration thereof doth undoubtedly belong to their Majesties, by virtue of their Prerogative Royall Have thought fitt to Declare in plain Parliament Likeas they doe hereby Declare that also well for what is past, as in time comeing, Their Majesties will give Commissions one or more to such persons, as they shall be pleased to nominate, to inquire into the Condition and State of the Common Good and Revenues whatsoever of all the Royall Burroughs and how the samen hath been heretofore, or shall be hereafter employed or misemployed and to call the malversers and misemployers to make account, and to Ordaine and Decerne them and every one of them to refund and repay, or otherwise repair the Burrough or Burroughs by them lesed as the saids Commissioners shall find them lyable And Their Majesties with advice and consent forsaide Declare That the Acts and Sentences of the saids Commissioners, shall have the strength and effect of Acts and Sentences of the Court of Exchequer. And for preventing the like abuses and misapplications in all time hereafter Their Majesties with advice and consent forsaide Statute and Ordaine that every Burrough Royall within this Kingdom shall betwixt and the first day of November next to come, bring the Lords of their Majesties Thesaury and Exchequer an exact stated Accompt in Charge and Discharge, subscribed by the present Magistrates and Town Clerk, of their whole publick Good and Revenue, and of the whole Debts and Burthens, and Incumbrances that doe affect the samen And farther that it shall not be lawfull for hereafter to the Magistrates and Town Councill of any Burgh Royall to contract any Debt or give Bond for the samen, Obligeing them and their Successors in Office without a previous Act made in the Town Councill in their fullest Convention, both of Merchants and Deacons of Crafts, Condescending upon the Causes and Uses for which the saids Debts are contracted and Bonds granted Certifying the forsaids Magistrates and others who shall contract Debts and grant Bonds, without the said previous Act, or if the causes and uses condescended on in the said Act shall not be found to be just true and reall, that in any of the saids Cases the saids Contractors and Subscribers shall be personally lyable, they and their heirs and successors in their private Fortunes to relieve and disburthen the Town of the saids Debts, and that by Decrees of the Lords of Session, at the instance of any Burgess of any of the saids Burroughs, who hath borne the Office of Provest Baillie or Dean of Gild within the samen but prejudice always to the Right and Security of the party Creditor as likeways but prejudice to any private persons Rights, as to any of the saids Burghs, as accords.<sup>329</sup>

<sup>329</sup> In reference to this act, so far as not superseded by 3d Geo. IV. ch. 91, see General Report of the Commissioners appointed to inquire into the state of municipal corporations in Scotland, and published in 1835, page 26 to 28 inclusive.

51. *ACT & RATIFICATION anent the Communication of Trade to Burghs of Barony & Regality.*

FORASMUCH as the Convention of the Royall Burrowes Holden At Dundee the Thirteenth of July One thousand Six Hundred and Nyntie two, being willing to communicate the Benefite of Trade allowed to them by the Laws and Acts of Parliament in favours of Burroughs of Regalities Baronies and others, that could relieve them of a proportionall part of the Burthen imposed upon Trade did by a Contract of the Date the                      day of                      One thousand Six hundred                      years, Grant Power and Commission to Master John Buchan Advocate their Agent and to his substitutes for whom he shall be answerable for the space of three or five years in the option of the said M<sup>r</sup> John to cause put the Act of Parliament made in their favoures, upon the fourteenth day of June, One thousand Six hundred and Nyntie years to execution against unfree Traders, and to apply all the ffynes Penalties and Casualties to his and their own use [& behove and to Communicate the benefite of trade to Burghs of Regalities Barronies & vthers dursing the sd space] as he should think fitt, reserving always power to the Royall Burroughs for the freedome and priviledge of Trade, to grant the same upon such Compositions, as they shall think fitt, provyding allways the saids Compositions were payed in to the said Master John, ffor which he is obliged to relieve the saids Royall Burroughs, during the space forsaid, of ten pounds of the Hundred pounds of the Taxt Roll imposed upon the Royall Burroughs by Act of Parliament, as the said Contract more fully bears OUR SOVERAIGNE LORD and LADY and the Estates of Parliament considering how just and advantageous Communication of Trade will be to the hail Lieges, when the same is granted by the Royall Burroughs for relief of a proportionall parte of the burthen imposed upon them for their Trade Therefore their Majesties with advice and consent of the Estates of Parliament Doe Ratify Approve and Confirme the said Contract in its hail heads Clauses and Articles above written And their Majesties with advice and consent forsaid Statute and Ordaine that sicklike execution shall pass against the Burghs of Regalities, Baronies and others for inbringing the proportions of the burthen to be payed by them for relief of the Royall Burroughs, which any of them hath already, or hereafter shall agree unto, in consideration of the benefite of Trade communicate to them, sicklike and in the same manner, as is usuall for inbringing of the Cess payable to their Majesties by the Royall Burroughs And farder their Majesties with advice and consent forsaid Doe hereby expressly Statute and Ordain, that after the expyreing of the forsaid Contract, betwixt the said Royall Burroughs and M<sup>r</sup> John Buchan their Agent, the forsaid Communication of Trade shall continue and be perpetuate unto the saids Burghs of Regalities Baronies and others, upon the paying or relieving the Royall Burroughs of a just proportion of the hundred pound of the Taxt Roll imposed upon them by Act of Parliament, effeirand and correspondent to their Trade, and which proportion shall be equally condescended upon by the said Royall Burroughs at their first generall meeting, after expiration of the said Contract, and thereafter as often as they meet for altering of their Taxt Roll, and in case any mistake or inequality shall happen in the adjusting the said proportion to be payed by the Burghs of Regalities Baronies and others, conform to the Trade as aforessaid, then and in that case the said Burghs are hereby allowed to apply themselves to the Parliament for regulateing and determining the forsaid Quota according as they shall see just, and upon the Division swa to be made of the said Quota, then the said Royall Burroughs are to distribute and proportion the samen amongst the saids Burghs of Regalities Baronies and others according to their respective Trades

And their Majesties, with consent forsaide Doe hereby strictly Discharge all persons whatsoever to exercise any kind of Trade, under the penalties contained in the Act of Parliament except Burgesses and Indwellers in Royall Burroughs, and their free ports by consent of their Burroughs to which they belong, and these who pay their proportion of the said Quota to be payed by the Burghs of Regalities and other Burghs aforesaid And to the effect that the burthen may be equall and reasonable, and that none be exempted Their Majesties with advice and consent forsaide Do Authorize Appoint and Ordaine any of these who have the benefite of the Communication to putt all Acts of Parliament made in favours of the Burghs Royall in full execution against all such unfree Traders within their own bounds and jurisdictions, as shall not undertake for and pay a proportion of the said Quota, which the Burroughs are to be relieved of, and to apply the ffynes and penalties to their own use and behoof, Likeas the Masters or Magistrates of the Towns to whom the Trade is to be communicate are hereby authorized to appoint Stent Masters upon Oath within their Towns, for laying on the Burthen upon the Traders and others who have benefite by the Trade.<sup>330</sup>

64. *ACT against Profaneness.*

OUR SOVERAIGNE LORD and LADY takeing to their serious consideration the Profanitie and Immoralities that so much at present abound, and how much it concerns the glory of God, the honour of the Protestant Religion and the good and peace of the Kingdome that they be repressed and restrained Do therefore with advice and consent of the Estates of Parliament hereby Ratifie and Revive all Acts of Parliament formerly made against Sabbath breaking, profane and idle Swearing, Drunkenness or other Immorality whatsoever, ordaining the same to be put to strict Execution, with all diligence. And for the better effectuating thereof do hereby impower and ordaine every Presbytrie within this Kingdome to appoint one or more, within their respective bounds, whom they shall think fitt to chuse, to take notice of the forsaide vices and Immoralities and to delate and prosecute the persons guilty thereof, before the Magistrates of the bounds, conform to the tenors of the said Acts, and allowing to them out of the ffynes and Penalties that shall be incurred, not only their whole charges and expenses of the said prosecutions, but also such further Rewards, as the Lords of their Majesties Privy Councill shall think fitt.

73. *ACT anent Procuratories of Resignation and Precepts of Sasine.*

OUR SOVERAIGNE LORD and LADY the King and Queens Majesties Considering that Procuratories of Resignation and Precepts of Sasine do become void by the death of the Granters, as well as of the Parties, in whose favours they are granted, albeit they be granted in rem suam, and wholly in favours of the Receiver, and that thereby a great and unnecessary Expense is occasioned for obtaining these procuratories and precepts renewed Therefore Their Majesties, with advice and Consent of the Estates of Parliament Doe Statute Ordaine and Declare that Procuratories of Resignation and Precepts of Sasine, either already granted, or to be granted, shall in all time comeing continue in full force and be sufficient Warrants, not only for makeing of Resignations and takeing Sasines, in favours of the parties, to whom they are or shall be granted, but likewise in favours of their Heirs Assignneys and Successors having right to the said Procuratories and Precepts, either by a generall service, or by Disposition and Assignment, or by Adjudication, as well after as before the death of the Granters or Parties to whom

<sup>330</sup> In reference to this act, see 1698, ch. 39, and note annexed thereto.

they are granted or both, Provideing always that the Instruments of Resignation, and Sasines taken after the death of either Party, express the Titles of those, in whose favours the Resignation is made, and to whom the Sasine is granted, and that the same be deduced therein, otherways to be voyd and null Excepting always from this Act precepts of Clare constat. And it is further hereby Declared for the greater Security of Purchasers and others, that Charters granted by Subalterne Superiors may bear a Clause of Registration as well as Dispositions, and that on the said Clauses Registration may follow, but only in the Books of Council and Session, and in no other Record.

APUD EDINBURGH,

IX DIE MAII, A.D. M.DC.XCV.

PARL. 1st. Sess. 5th.

7. *ACT anent Principals and Cautioners.*

HIS MAJESTY and the Estates of Parliament considering the great hurt and prejudice, that hath befallen many persons and ffamilies and oft times to their utter ruine and undoing, by mens facility to ingage as Cautioners for others, who afterwards failing, have left a growing burden on their Cautioners, without relief. Therefore, and for remead therof, His Majesty with advice forsaid Statutes & Ordains, that no man binding and ingaging for hereafter, for and with another conjunctly and severally, in any bond or Contract for soumes of money, shall be bound for the said soumes for longer than seven years after the date of the bond, bot that from and after the said sevin years, the said Cautioner shall be eo ipso free of his Caution. And that whoever is bound for another either as express Cautioner, or as Principal or Co-principal, shall be understood to be a Cautioner, to have the benefit of this Act, providing that he have either clause of relief in the bond, or a bond of relief a part, intimat personally to the Creditor at his receaving of the bond, without prejudice allways to the true principals, being bound in the whole contents of the bond or Contract; As also of the said Cautioners being still bound, conform to the terms of the Bond within the said sevin years, as before the making of this Act; As also providing, that what legal diligence, by Inhibition, Horning, Arreastment, Adjudication, or any other way, shall be done within the sevin years, by Creditors against their Cautioners, for what fell due in that time, shall stand good, and have its course and effect, after the expiring of the sevin years, as if this Act had not been made.<sup>331</sup>

8. *ACT Regulating the Sale and Payment of Bankrupts Estates.*

HIS MAJESTY with advice and consent of the Estates of Parliament, for the further clearing and explaining of former Lawes anent the Sale of Bankrupts Estates, Statutes, Enacts and Declares, that it shall be lawfull to all purchasers of Bankrupts Estates, after the space of one year, counting from the Decreet of Sale, after the term of Whitsunday One thousand Six hundred and nyntie Six years, to consign the whole price offered, with the annualrent due at the time of the Consignation, or so much thereof as remains in the hands of the purchaser, over and above what is warrantably payed to Creditors preferred by the Lords of

<sup>331</sup> In reference to this act, see Ersk., b. iii. tit. vii. § 22, *et seq.*

Session in the hands of the Magistrats and Toun Council of Edinburgh and their Tresaurer for the time, who are hereby obliedged and ordained to receive the same, upon their receipt in the terms aftermentioned: And for the greater benefit of the Creditors, are further allowed to keep in their hands the consigned money, for the space of a year from the next term of Candlemas, Whitsunday, Lambas, or Martinmas, after the Consignation, upon payment of three per Cent. of annualrent, ay and whil it be called for; And the saids Magistrats, Toun Council and Tresaurer of Edinburgh for the time, shall be and are hereby obliedged to make furthecoming, the consigned money in whole or in part, with the annualrent therof, at three per Cent. as said is, according as they shall be ordered by the saids Lords of Session with Certification if they failzie, that they shall be charged with horning for that effect, and shall be thereafter lyable, not only in the tenth part of the principal soume called for in name of penalty, but also in the ordinary annualrent of the said principal, ay and whill the compleat payment therof. And because purchasers of Lands affected with liferents, have retention of a share of the price, It is hereby declared, that the purchaser shall be allowed to consign what remains in his hands, after the deceas of the Liferenter in manner forsaid; he alwayes making due intimation of the Consignation to the Creditors who got the rest of the price. And his Majesty with Consent forsaid Statutes enacts & Declares, that the purchaser paying the price offered to the Creditors, according as they or shall be ranked and preferred by the Lords of Session, or consigning the same in manner forsaid, shall be forever exonered, and the Security given for the price, shall be delivered up to be cancelled, and the Lands and others purchased and acquired, disburdened of all debts or deeds of the Bankrupt or his predecessors from whom he had right, and that the Bankrupt his heirs or appearand heirs, or Creditors without exception of minority, not compearing or conceaving themselves to be prejudged, shall only have access to pursue the receivers of the price and their heirs, & reserving to the minor lassed his relieffe as accords: And further His Ma<sup>ty</sup> with advice and consent forsaid doeth hereby Authorize the Lords of Session to grant warrand for charging the Magistrats and Tresaurer of Edinburgh for the time, to make payment of the soumes consigned to the several Creditors according to their preferences, upon the saids Creditors their several applications to the Lords, and consigning in the Clerks hands, Dispositions and Conveyances in favours of the purchasers, in so farr as their several rights may affect the purchase; As also in case any debate remain undetermined amongst the Creditors anent their preferences, it shall be lawfull to the saids Lords, upon application of the saids Creditors, to grant warrand for uplifting and employing the soumes consigned, upon sufficient Security bearing annualrent.<sup>382</sup>

#### 14. *ACT against Blasphemy.*

OUR SOVERAIGN LORD with advice and Consent of the Estates of Parliament Does hereby Ratify Approve, and Confirm the twenty first act of the first Session of the first Parliament of King Charles the Second Intituled Act against the crime of Blasphemy, in the haill heads, clauses, and articles thereof, & ordains the same to be put to due and punctual Execution: And farder, His Majesty with advice and consent forsaid, Statutes and Ordains, that whoever hereafter shall in their writing or discourse, deny, impugn or quarrell, argue or reason, against the being of God, or any of the persons of the blessed Trinity, or the Authority of the Holy Scriptures of the old and new Testaments, or the providence of God in the Government of the World, shall for the first fault be punished with Im-

<sup>382</sup> This act is partly repealed by the 54th Geo. III. ch. 137, § 6, see note annexed to 1681. ch. 83.

prisonment, ay and while they gave publick Satisfaction in Sackloth to the Congregation within which the Scandal was committed. And for the second fault, the delinquent shall be fined in an years valued rent of his real Estate, and the twentieth part of his free personal Estate (the equal halfe of which fynes are to be applyed to the use of the poor of that Paroch, within which the crime shall happen to be committed, and the other half to the party Informer) besides his being imprisoned, ay and whil he make again Satisfaction ut supra. And for the third fault he shall be punished by death as an obstinat Blasphemer. Likas His Ma<sup>ty</sup> with advice and consent foresaid, hereby Authorizes and strictly requires and enjoyns all Magistrats and Ministers of the Law, and Judges within this Kingdom, to put this present act in Execution as to the first fault. And does hereby impower and require all Shirriffs, Stuarts, Baillies of Bailliaries & Regalities and their deputs, & Magistrats of Burghs, to put this present act in execution as to the second fault. And as to the third fault his Ma<sup>ty</sup> with advice & consent foresaid remitts the execution of this present Act to the Lords of his Ma<sup>ty</sup> Justiciary.<sup>333</sup>

#### 16. *ACT against Prophaneness.*

OUR SOVERAIGN LORD and Estates of Parliament, Considering that the twenty fifth Act of the Second Session of this current Parliament, Intituled Act against prophaneness, and the Acts generally and particularly therein ratifyed, has not taken the wished effect, through the negligence of the Magistrats Officers and others concerned, to put the same in Execution; Do hereby Authorize, and strictly require and enjoyn all Shirriffs and their Deputs, Stuarts and their Deputs, Baillies of Bailliaries and Regalities and their Deputs, Magistrats of Burghs Royall and Justices of Peace, within whose bounds any of the Sins forbidden by the saids Lawes shall happen to be committed, to put the saids Acts to exact and punctual execution, at all times, without necessity of any dispensation; and against all persons, whether officers, souldiers, or others without exception, with this Certification, that such of the saids Judges as shall refuse, neglect, or delay to put the saids Lawes in Execution, upon application of any Minister or Kirk Session, or any person in their name, giving in Information and offering sufficient probation against the offender, that every one of the saids Judges sua refusing, neglecting, or delaying, shall toties quoties be subject and lyable to a fyne of One hundred pounds scots, to be applyed for the use of the poor of the paroch, where the Scandal complained on was committed: Declaring hereby that the Agent for the Kirk, the Minister of the Paroch, or any other person having warrand from him, or from the Kirk Session, within the Paroch whereof the Scandal complained on was committed, shall have good interest to pursue before the Lords of Session, any of the forsaid Judges who shall happen to refuse, neglect or delay to put the saids Lawes against prophaneness to exact and punctual execution, who are hereby ordained to proceed summarly, without the order of the Roll, and that it shall be a sufficient probation of their refusal, neglect, or delay, if the Pursuer instruct by an Instrument under a Nottars hand, and witnesses thereto subscribing, and deponing thereupon, that he did inform the saids Judges of the said scandal, and offered a sufficient probation thereof, unless the Judge sua pursued condescend and instruct, that within the space of ten dayes after the said application, he gave order to cite the party complained on, to compear before him, within the space of ten dayes, and that at the day of Compearance, he was ready and willing to have taken cognition and tryal of the Scandal complained on, and Instruct and

<sup>333</sup> The punishment of the crimes here specified is modified by 6th Geo. IV. ch. 47, and 7th Will. IV. ch. 5.



and Condescend on a relevant reason why the saids Lawes were not put in Execution against the person complained on.<sup>334</sup>

36. *ACT anent Lands lying Run-rig.*

OUR SOVERAIGN LORD and the Estates of Parliament Taking into their Consideration the great Disadvantage arising to the whole Subjects from Lands lying run-rig, and that the same is highly prejudicial to the Policy and Improvement of the Nation, by planting and inclosing, conform to the several Lawes and acts of Parliament of before made thereanent: For remeid whereof His Majesty with the Advice and Consent of the said Estates Statutes and Ordains that wher-ever Lands of different Heretors ly run-rig, it shall be leisum to either party to apply to the Shirriffs, Stewarts, and Lords of Regality or Justices of Peace of the several Shires where the Lands ly; to the effect that these Lands may be divided according to their respective interests, who are hereby appoynted and authorized for that effect; And that after due and lawfull Citation of all parties concerned, at an certain day to be prefixed by the said Judge or Judges. It is alwayes hereby Declared That the saids Judges, in making the forsaid Division, shall be, and are hereby restricted, so as special regard may be had to the Mansion houses of the respective Heretors, and that there may be allowed and adjudged to them the respective parts of the Division, as shall be most commodious to their respective Mansion houses and Policy, and which shall not be applicable to the other adjacent Heretors: As also it is hereby Provided and Declared That thir presents shall not be extended to the Burrow and Incorporat Acres bot that notwithstanding hereof, the same shall remain with the Heretors to whom they do belong, as if no such Act had been made.<sup>335</sup>

39. *ACT for Obviating the frauds of Appearand Heirs.*

OUR SOVERAIGN LORD Considering the frequent frauds and dissapoyntments that Creditors do suffer, upon the deceas of their Debtors, and through the contrivances of appearand heirs in their prejudice: For remead thereof, and also for facilitating the transmission of heretage in ffavours of both heirs and Creditors: His Majesty with advice and Consent of the Estates of Parliament Statutes and Ordains That if any man since the first of January One thousand Six hundred and Sixty one, have served or shall hereafter serve himself heir, or by Adjudication on his own bond, hath since the time forsaid succeeded, or shall hereafter succeed, not to his immediat Predicessor, but to one remoter, as passing by his ffather to his Goodsire, or the like, then and in that case, he shall be lyable for the debts and deeds of the person interjected, to whom he was appearand heir, and who was in the possession of the Lands and Estates to which he is served, for the space of three years, and that in so farr as may extend to the value of the said Lands and Estate, and no further, Deduceing the debts already payed: As also with this order, as to the time past, that all the true and lawfull debts of the appearand heir entering as said is, and already contracted with the true and real debts of the Predecessor to whom he enters shall be preferred in the first place. As also his Majesty with advice and consent forsaid Statutes and Ordains that if any appearand heir for hereafter shall without being lawfully served or entered heir, either enter to possess his Predicessors Estate, or any part

<sup>334</sup> In reference to this act, see *Jobson & Hay v. Lambart*, 29th Nov. 1828, 7 S. & D., p. 83.

<sup>335</sup> In reference to this act, see *Erskine*. b. iii. tit. iii. § 59.

thereof, or shall purchase by himselfe, or any other to his behoove any right thereto, or to any legal diligence, or other right affecting the same, whether redeemable or irredeemable, otherwise than the said Estate is exposed to a lawfull public roup, and as the highest offerer thereat, without any Collusion, his forsaid possession or purchase shall be repute a behaviour as heir and a sufficient passive title to make him represent his predicesor universally, and to be lyable for all his debts and deeds, sicklike as if the said appearand heir, possessing or purchasing as said is were lawfully served, and entered heir to his said predicesor: Declaring allwise likas it is hereby Declared that the said appearand heir may bring the said Estate to a roup, whether the Estate be bankrupt or not. And it is further Statute that where rights or legal diligences affecting their Predicesors Estates shall be found settled in the person of any such near Relation to whom the appearand heir to the forsaid predicesor may also succeed as heir, the appearand heirs possessing by vertue of the said rights and Diligences, except upon lawfull purchase by publick roup, as said is, shall not only be a passive title, bot the said rights and Diligences in the person of the said near Relation, shall only be sustained as valid to exclude the Predicesors Creditors, in so farr as can be qualified and instructed, that these rights and diligences were truly and honestly purchased for payment of sums of money and no further. And moreover His Majesty with Advice and Consent forsaid Statutes and Ordains that for hereafter any appearand heir shall have free liberty and access to enter to his predicesors cum beneficio Inventarii or upon Inventory as use is in Executories and moveables, allowing still to the said appearand heir, year and day to deliberat in which time he may make up the forsaid Inventory, which he is to give up upon oath, full and particular as to all Lands houses annual rents or other heretable rights whatsoever, to which the said appearand heir may, or pretends to succeed; which Inventory to be subscribed by him before witnesses, duly insert and designed shall be given in to the Clerk of the Shirriff Court of the Shire, where the defuncts Lands and heretage ly; or in case the defunct had no Lands or heretage requiring saisin, to the Clerk of the shire, where the defunct deceased: To which Inventory, the Shirriff or Shirriff Deput, with the Clerk of the Court, shall also subscribe in Judgement, and record the same in their Registers, and give extracts thereof, ffor all which, the upgiver of the said Inventory thall pay no more to the Court and Clerk thereof, on any account, than the ordinary prices of Extracts in that Court, for an Extract of the said Inventory: And this Inventory is to be given in, recorded and extracted as said is, within the said year and day, to deliberat, And thereafter the forsaid Extract thereof, shall within fourty dayes after the expiration of the said year and day, be again presented and Registered in the books of Council and Session, in a particular Register to be appoynted by the Clerk Register, for that effect: And the appearand heir entering by Inventory in manner forsaid, is hereby Declared to be only lyable to his Predicesors debts and deeds, secundum vires Inventarii, and in as farr as the value of the heritage given up in Inventory will extend and no farder. Providing allwayes likas it is hereby specially provided, that if the aforesaid appearand heir shall have any intromission with the Defuncts heretable Estate, or any part thereof, otherwayes than necessary intromission, for Custody and preservation, before his giving in, recording and Extracting of the said Inventory in manner forsaid; or if he shall fraudfully omitt any thing out of the said Inventory, that is, which yet he shall be found to have intrometted with, or possessed, then, and in either of these cases, he shall also lose the benefit of the Inventory, and be universally lyable, as if entered heir without Inventory. And farder that if any part of the said heretable Estate shall be without fraud omitted to be given up by him in the forsaid Inventory, and shall

not in the mean time be affected by the diligence of a lawfull Creditor, he shall have liberty so soon as he comes to the knowledge thereof and within fourty dayes thereafter to make an eik of the same, to the said Inventory ; which eik is to be made and subscribed, given in and Recorded, in the same manner, with the principal Inventory abovementioned. And lastly it is hereby Declared, that appearand heirs if they please, may enter without Inventory as formerly in all poynts and that whither they enter with or without Inventory, they are still to enter by Service and Retour, or by precepts of Clare constat, in manner formerly accustomed.<sup>336</sup>

51. *ACT concerning the Church.*

And his Majesty with consent forsaid, for the greater encouragement of all Ministers of the Gospel, not only Ratifies the Act of Parliament One thousand Six hundred and Sixty nyne, forbiding all Suspensions of Special Decreets and Charges for Ministers stipends, or the rents of their benefices, except on production of Discharges, or upon Consignation in manner therein provided : But further Statutes and Ordains, that there be no Advocation, or sist of proces granted of actions for the said stipends, or rents or benefices, when persued before inferiour Judges, And that in the case of a Decreet there be neither Suspension nor sist of execution granted except on production of clear Discharges or Consignation as said is, And if any suspension be past, that the same be summarly disscust at the instance of the Charger, without abiding the order and course of the Roll : And that if the Letters be found orderly proceeded, the Suspender be also Decerned at least in a fifth part more than the sums charged for, with what more the Lords shall Judge reasonable to be payed to the Charger for his expenses and Damage. And if any Minister shall happen to pursue for his Stipend by way of ordinary Action before the Lords, It is hereby farther Ordained that the same be summarly proceeded in, and Discussed without abiding the Course of the Roll.<sup>337</sup>

54. *ACT for Preservation of Meadows, Lands and Pasturages, lying adjacent to sand hills.*

OUR SOVERAIGN LORD Considering that many Lands, Meadows, and Pasturages lying on the Sea Coasts, have been ruined and overspread in many places of this Kingdom by sand driven from adjacent sand hills, the which has been mainly occasioned by the pulling up by the Root of Bent Juniper and broom bushes which did loose and break the surface and scrooffe of the saids hills ; and particularly Considering that the Barrony of Cowbin, and house and yairds thereof, lying within the Shirriffdom of Elgin, is quite ruined and overspread with sand, the which was occasioned by the forsaid bad practice of pulling the Bent and Juniper Therefore His Majesty with advice and consent of the Estates of Parliament, for preventing of the like prejudices in time coming, Does strictly Prohibit and Discharge the Pulling of Bent, Broom or Juniper off sand hills for hereafter, either by the proprietars themselves, or any other whatsoever, the same being the natural fences of the adjacent Countries to the saids hills ; Certifying such as shall contraveen this Act, they shall not only be lyable to the damages, that shall therthrough insue, but shall likewise be lyable in the soun of ten pounds of penalty, the one halfe thereof to belong to the Informer, and the other halfe to the Judge within whose Jurisdiction the said Contravention shall be committed.<sup>338</sup>

<sup>336</sup> In reference to this act, see Erskine, b iii. tit. viii. § 68-85-94.

<sup>337</sup> The whole of this act is temporary, with the exception of that part of it which is here published. The act here ratified is the same as that which see, and note thereon.

<sup>338</sup> This act was confirmed and ratified by the Parliament of Scotland, 1695, c. 11.

69. *ACT Concerning the Dividing of Commonties.*

OUR SOVERAIGN LORD with Advice and Consent of the Estates of Parliament for preventing the discords that arise about Commonties, and for the more easie and expedit deciding thereof, in time coming, Statutes and Ordaines, that all Commonties excepting the Commonties belonging to the King and Royal Burrowes that is all that belong to his Majesty in property, or Royal Burrowes in Burgage, may be divided at the instance of any having interest, by Summonds raised against all persons concerned, before the Lords of Session, who are hereby Impowered to discuss the Relevancy and to determine upon the rights and interests of all parties concerned and to value and divide the same, according to the value of the rights and interests of the several parties concerned, and to grant Commissions to Shirriffs Stuarts Baillies of Regality and their Deputs, Justices of Peace or others for perambulating and taking all other necessary probation Which Commissions shall be reported to the saids Lords, and the saids processes ultimately determined by them And where mosses shall happen to be in the saids Commonties with power to the saids Lords to divide the saids mosses amongst the several parties having interest therein, in manner forsaid; or in case it be Instructed to the saids Lords that the saids mosses can not be conveniently divided His Majesty with consent forsaid Statutes and Declares that the said mosses shall remain common, with free ish and entrie thereto, whither divided or not, Declaring also, that the interest of the Heretors having right in the said Commonties shall be estimat according to the Valuation of their respective Lands or properties And which Divisions are appoynted to be made of that part of the Commonty that is next adjacent to each heretors property.<sup>339</sup>

71. *ACT anent Letters passing the Signet.*

OUR SOVERAIGN LORD with advyce and consent of the Estates of Parliament, for reviving and preserving the good order that ought to be kept in the passing of Writs under the Signet Statutes and Ordains that all Writs passing under the Signet, called the Signet of the Lords of Session, be subscribed by a Writer as Clerk to the said Signet: Excepting allennarly herefrom Letters of diligence in processes before the Session and Letters of Citation before the Parliament which are to be subscribed by the Clerks of Session. And his Majesty with advice forsaid prohibits the keeper of the said Signet to affix the same to any Letters not Subscribed as above, any custom or practice in the contrary notwithstanding, and that as he will be answerable upon his perrill.<sup>340</sup>

72. *ACT anent Executry and Moveables.*

OUR SOVERAIGN LORD Considering that the Law is defective, as to the affecting with legal diligence the moveable Estate which pertained to a Defunct, either for his own or his nearest of kins debt, in such manner as a Defuncts heretage may be affected by charging to enter heir in the known manner Doth therefore with advice & consent of the Estates of Parliament Statute and Ordain that in the case of a moveable Estate left by a defunct, and falling to his nearest of kin, who lyes out, and doth not confirm the Creditors of the said nearest of kin may either require the Procurator fiscal to confirm and assign to them under the perrill

<sup>339</sup> In reference to this act, see Ersk. b. iii. tit. iii. § 56.

<sup>340</sup> In connection with this act, see 1st Will. IV. ch. 69, § 40. A. S. 16th November 1830, § 5, and A. S. 16th February 1841, § 43.

and pain of his being lyable for the debt, if he refuse, or they may obtain themselves Decerned Executors Dative to the defunct as if they were Creditors to him: With this provision allwayes, that the Creditors of the Defunct, doing diligence to affect the said movable Estate within year & day of their debtors deceas, shall alwayes be preferred to the diligence of the said nearest of kin. And it is further Declared that in the case of any depending Cause or Clame against a Defunct the time of his deceas it shall be leisom to the persuer of the said Cause or Clame, to charge the Defuncts nearest of kin to confirm Executor to him within twenty dayes after the charge given, which Charge so execute shall be a passive title against the person charged as if he were a vitious Intrormetter, unless he Renunce, and then the Charger may proceed to have his debt Constitut, and the hereditas jacens of moveables declared lyable by a Decreet cognitionis causa, upon the obtaining whereof, he may be Decerned Executor Dative to the defunct and so affect his moveables in the common form.<sup>341</sup>

74. *ACT for Reviving the Acts of Council anent the Poor.*

OUR SOVERAIGN LORD with advice and consent of the Estates of Parliament Doth hereby Ratify Approve & Revive all Acts of Parliament, and acts and Proclamations of Council for maintaining of the Poor, and Repressing of Beggars, and ordains them to be put to vigorous Execution in all poynts. And further Impowers the Lords of his Majesties Privy Council to take the most effectual course to make the saids Acts and Proclamations effectual, conform to the true design thereof.<sup>342</sup>

APUD EDINBURGH,

VIII DIE SEPTEMBRIS, A.D. M,DC,XCVI.

PARLT. 1st. SESS. 6th.

4. *ACT for regulateing Deeds done on death bed.*

OUR SOVERAIGN LORD Considering that many questions have arisen concerning deeds done on death bed For clearing whereof His Majestie with advice and consent of the Estates of Parliament Statutes and Ordains That it shall be a sufficient Exception to Exclude the reason of Death bed as to all Bonds Dispositions Contracts or other Rights that shall be hereafter made and granted by any person after the contracting of Sickness that the Person lived for the space of threescore dayes after the makeing and granting of the saids deeds albeit during that time they did not go to Kirk and mercat but prejudice allwayes as of before to quarrell and reduce the saids rights and deeds if it shall be alleadged and proven that the Person was so affected by the Sickness the time of the doing of the saids deeds that he was not of sound judgement and understanding As also but prejudice to the Lords of Session to determine as to all Bands dispositions contracts or other rights already made and granted in time of Sickness conform to the former Law and custome.<sup>343</sup>

<sup>341</sup> In reference to this act, see Ersk. b. iii. tit. ix. § 35.

<sup>342</sup> In reference to this act, see Dunlop on Parochial Law, p. 328.

<sup>343</sup> In reference to the Law of Deathbed, see also A. S. 29th February 1692.

5. *ACT for Declaring nottour Bankrupt.*

OUR SOVERAIGN LORD Considering that notwithstanding of the Acts of Parliament already made against fraudfull alienations by Bankrupts in prejudice of their Creditors yet their frauds and abuses are still very frequent Does therfor and for the better Restraining and obviating thereof in time comeing with advice and consent of the Estates of Parliament Statute and Declare That for hereafter if any Debitor under diligence by Horning & Caption at the instance of his Creditor be either imprisoned or retire to the Abbay or any other priviledged place or flee or abscond for his Personall Security or defend his person by force and be afterwards found by sentence of the Lords of Session to be insolvent shall be holden and repute on these three joint grounds viz. Diligence by Horning and Caption and insolvencie joyned with one or other of the said alternatives of imprisonment or retiring or fleeing or absconding or forcible defending to be a nottour Bankrupt and that from the time of his forsaid imprisonment retireing fleeing absconding or forcible defending Which being found by Sentence of the Lords of Session at the instance of any of his Just Creditors who are hereby empowered to raise and prosecute a declarator of Bankrupt thereanent His Majestie with Consent of the Estates of Parliament Declares all and whatsomever voluntar dispositions assignations or other deeds which shall be found to be made or granted directly or indirectly be the forsaid dyvor or Bankrupt either at or after his becomeing Bankrupt or in the space of Sixty dayes of befor in favors of any of his Creditors either for their satisfaction or farther Security in preference to other Creditors to be voyd and null : Likeas it is declared that all Dispositions Heretable Bonds or other heretable rights whereupon infestment may follow granted by the forsaid Bankrupts shall only be reckoned as to this case of Bankrupt to be of the date of the Sasine lawfully taken thereon but prejudice to the Validity of the said Heretable rights as to all other effects as formerly And because infestments for relief not only of debts already Contracted but of debts to be Contracted for thereafter are often found to be the occasion or covert of frauds It is therfor farder declared That any Disposition or other rights that shall be granted for hereafter for relieff or security of debts to be contracted for the future shall be of no force as to any such debts as shall be found to be Contracted after the Sasine or Infestment following on the said Disposition or right but prejudice to the validity of the said disposition and right as to other points as accords And lastly His Majestie and the Estates of Parliament Do hereby Statute and ordain That if any person shall for hereafter defraud his Creditors and be found by Sentence of the Lords to be a fraudulent Bankrupt the degree of his fraud shall also be determined by the same sentence and the Person guilty not only held to be infamous Infamia Juris, but also be by them Punished by Banishment or otherwayes (death excepted) as they shall see cause And the Lords of Session are hereby Discharged to Dispense any Bankrupt as to the habit unless in the Summonds and proces of Cessio the Bankrupts failing through misfortune be lybelled sustained and proven And this but prejudice of all former acts anent Bankrupts which are still to stand in their full force.<sup>344</sup>

<sup>344</sup> For a full Commentary on this act, see Bell's Com. vol. ii. The act is extended and controlled by various sections of 54th Gep. III. c. 137, and 2d and 3d Vict. ch. 41.

By 6th and 7th Will. IV. ch. 56, § 18, it is declared unlawful to ordain the debtor to wear the dyvours habit, and the relative part of this act is thereby repealed.

8. *ACT anent the Nomination of Tutors and Curators.*

OUR SOVERAIGN LORD and the Estates of Parliament Considering that Tutors nominat by a father to his Children are persons in whom he repositeth the greatest trust and that the tutors nominat frequently decline the office being unwilling to subject themselves to the hazards of Omissions of being oblidged in solidum each of them for others And likewayes Considering that the father can make a better choise of Curators for his Children who are minors then the minors could make for themselves Therfor His Majestie with advice and consent of the Estates of Parliament Statutes and Ordains that it is and shall be lawfull for the father by ane act or deed in his leige poustie to make a nomination of such Persons as he thinks fit to be tutors and of such Persons as he thinks fit to be Curators to his Children dureing their Minority Containing this Provision and Quality That the saids Tutors or Curators shall not be lyable for Omissions but for their actual intronmissions with the means and estate descending from the father and other deeds of administration thereanent And that each of them shall only be lyable for himselfe and not in solidum for others And it is hereby Statute and ordained That the Tutors or Curators so nominat, shall not be lyable for Omissions but only for their actual intronmissions with the means and estate descending from the father and other deeds of administration thereanent and that each of them shall only be lyable for himself and not in solidum for others And that the Curators named by the father accepting befor the Judge ordinary in the terms of their nomination shall have right to exerce the office dureing all the years of the minority ; And it is hereby Declared that where the same Persons are named by the father to be both Tutors and Curators it shall be lawfull and free for those who shall accept and exerce the office of Tutorie to decline or accept as Curators after the Pupillarity expires as they think fit Declaring allwayes that if the condition of any of the Tutors or Curators to be named with the qualities asps<sup>e</sup>it shall change and become such as any near relation to the pupil or minor shall think fit to represent the same to the Lords of Session to the end after mentioned Then and in that case the saids Lords are hereby empowered upon the said Complaint and a Citation upon it without abiding the order of the Roll to ordain the forsaid Tutor and Curator upon such reasons as they shall find probable either to find good and sufficient Caution for their administration, or to remove, and if He refuse to Remove him And lastly Provyding That nothing in this act shall liberat from or dispense with the makeing of Inventars.<sup>345</sup>

9. *ACT of Prescription anent Tutors and Curators accompts.*

OUR SOVERAIGN LORD and the Estates of Parliament considering the great danger and hazard to which Tutors and Curators are exposed by being subject to Compt and Reckonings to their Pupills and minors unless secured by the prescription of fourty years after the majority of the saids Pupills and minors Therfor His Majesty with the advice and consent of the Estates of Parliament Statutes and Ordains that all actions of Compt and Reckoning competent to pupills and minors against their Tutors and Curators for makeing their accompts not persued and insisted in within the space of ten years after the majority of the saids pupills and minors or after their death they dying in their minority shall after that time prescribe for ever And the saids Tutors and Curators and their Suc-

<sup>346</sup> In reference to this act, see Erakine, b. i. tit. vii. § 11.

cessors shall be als fully Exonerat and Liberat as if the saids Pupills and Minors after their majority had fully and amply Discharged the same And declares that the contrary action at the instance of Tutors and Curators against their Pupills and minors shall prescribe in the same manner within ten years Declareing all-ways That this Prescription shall not run against minors as also that all the for-said actions already Raised or competent to be Raised by either of the saids Parties hinc inde shall in like manner Prescribe within ten years after the date of this act.<sup>346</sup>

14. *ACT in favors of Universities Schools and Hospitalls.*

OUR SOVERAIGN LORD and Estates of Parliament being resolved to give all due encouragement to Universities Schools and Hospitalls Do therfor extend the Acts and Lawes made in favors of Ministers of the Gospell for their more easy and speedy ingathering of their Stipend, viz. That there be no suspension except on Consignation and as to allowance of Expenses and Summar Process to Universities Schools and Hospitalls to the effect they may have the same benefite therof for uplifting and ingathering their rents and debts that the forsaid Ministers have for their Stipends.<sup>347</sup>

15. *ACT allowing Securities &c. to be written book wayes.*

OUR SOVERAIGNE LORD understanding the great trouble and inconveniencey the Leidges are put to in finding out of clauses and passages in long Contracts Decreits Dispositions Extracts Transumptts and other Securities consisting of many sheets battered together which must be either folded or rolled together Doth for remeid therof with advice and consent of the Estates of Parliament Statute and Ordain that it shall be free hereafter for any person who hath any Contract Decreit Disposition or other security above mentioned to write to choose whither he will have the same written in Sheets battered together as formerly or to have them written by way of book in Leafs of Paper either in folio or quarto Provideing that if they be written bookways every page be marked by the number first second &c. and Signed as the margines were before and that the end of the last page make mention how many pages are therein contained, in which page only witnesses are to signe in writts and Securities where witnesses are required by Law And which writts and Securities being written bookwayes marked and signed as said is His Majestie with consent forsaid declares to be als valid and formall as if they were written on severall Sheets battered together and signed on the margine according to their present custome.<sup>348</sup>

16. *ACT declaring the Burgh of Greenlaw head Burgh of the Shire of Berwick.*

FORASMUCH as by ane Chartor granted by King James the Sixth of happy memory under the Great Seal in favors of Sir George Hume of Spott dated the twelfth day of December one thousand five Hundred ninety six the Toun of Greenlaw was erected in a free Burgh of Barrony with severall liberties and priviledges And in respect the said Toun did ly in the midle and center of the shire of Ber-

<sup>346</sup> In reference to this act, see Erskine, b. iii. tit. vii. § 25.

<sup>347</sup> See Beveridge on Bill-Chamber, p. 40, and Juridical Styles, vol. iii. p. 979.

<sup>348</sup> See Act of Sederunt, 17th January 1756, and Erskine, b. iii. tit. ii. § 16.



wick to which the Leidges might have commodious resort from all parts of the shire And that there was no place within the said shire more fit and convenient for Proclaiming the publick Proclamations and using and executeing of legall diligences And that the saids Proclamations and Executions of legall diligences might the better and more easily come to the knowledge of the Subjects It was appointed by the said Chartor that all Proclamations whatsoever Letters Denunciations Relaxations and other Publications of whatsoever nature That the samine should be Execute Published and Proclaimed at the mercat Cross of the said Burgh of Greenlaw as the Head and Principall Burgh of the said shire of Berwick and not at any other place or mercat Cross within the said Shire otherways it is declared all such Proclamations Denunciations Relaxations and other Publications whatsoever should be in themselves null & void Which Chartor was Ratified by Act of Parliament dated the fifteenth day of November one Thousand and six Hundred years And it being just and reasonable for the reasons and motives contained in the said Chartor that the using of all publick Proclamations and the Executeing of all legall diligences which are proper and in use to be Proclaimed and Execute at the head Burgh of the shire of Berwick should be Proclaimed at the mercat Cross of the said Toun of Greenlaw Therfor His Majestie with advice and Consent of the Estates of Parliament Statutes Ordains and Declares the said Toun of Greenlaw to be the head Burgh of the shire of Berwick And that for hereafter all publick Proclamations Hornings Inhibitiones Summonds and all other legall diligences whatsoever which by Law and Custome ought to be Proclaimed used and Execute at the head Burgh of the shire of Berwick shall be Proclaimed used and Execute at the mercat Cross of the said Toun of Greenlaw as the head Burgh of the shire And Declares all Proclamations and legall diligences Published used and Execute that shall be otherways done to be null and void. And ordains the Sheriff Court of the said shire to sit, be holden and kept in the said Toun of Greenlaw and that notwithstanding of any Act of Parliament Constitution or Custome to the contrary which are hereby Rescinded and declared to be null and void in so far as the same is contrare to and inconsistent with this present Act And ordains this Act to be Printed and Published among the publick Laws that none may pretend ignorance therof.

18. *ACT anent Registration of Seasins and other writts & diligences.*

OUR SOVERAIGN LORD considering that unless Seasins and other writts and diligences appointed to be Registrat be booked and insert in the respective Registers appointed for that effect the Leidges cannot be certiorat therof which is the great use and designe of their Registration Doth therfor with advice and consent of the Estates of Parliament Statute and Declare that no seasine or other writt or diligence appointed to be Registrat shall be of any force or effect against any but the granters and their heirs unless it be duely booked and insert in the Register and that notwithstanding of any thing contrary hereto contained in the nineteenth Act Second Session first Parliament King James the Seventh which is hereby in so far rescinded cassed and annulled and declared to have no effect in time comeing But prejudice allways to such as have Registrat their Seasins and other writts and diligences conform to the said Act befor the makeing hereof. And His Majestie with advice forsaid Ratifies and approves of the haill other heads and articles of the said Act and declares that Parties Lesed by the omission or negligence of Clerks to book and insert in the Register such writts as are presented to

them and which they attest on the back to be Registrat shall have action of damage against the heirs and representatives of the saids Clerks though no such actions be commenced in the Clerks lifetime.<sup>349</sup>

19. *ACT for Registrating of Summonds that shall be made use of for Interruptions.*

OUR SOVERAIGN LORD considering that for the Security of Purchasers and other singular Successors It is necessar that all Summonds and Executions thereupon which shall be made use of for Interruptions of Prescription of reall rights and all Instruments of interruption shall be Registrat that the Leidges may know of the samen Therefore His Majestie with advice and consent of the Estates of Parliament Statutes and Ordains That in time comeing all summonds made use of for Interruptions of Prescription of reall rights shall pass upon a bill under the signet and contain all the grounds and warrands upon which it proceeds and that the Summonds and Executions therof and all instruments of interruption be Registrat in a particular register to be appointed by the Lord Register to be kept at Edinburgh within Sixty dayes after the date of the Execution and instrument of Interruption And that this Registration be made in the same manner and with the same formalities in all points as are ordained by former Acts in the case of Registration of Seasins and Inhibitions and that this Register of Interruptions be kept in books apart Declareing that if the saids Interruptions shall not be duely registrat as above the same shall be of no force nor effect for interrupting the Prescription of reall rights as to Purchasers and singular Successors But prejudice to have the effect of ane interruption as to the persons against whom the same is execute and Instrument taken; And allows the keeper of the said Register to take payment for registrating such Summonds Executions and Instruments the half of the dues due for registrating of Hornings and Inhibitions And declares all interruptions that shall be made via facti for interrupting the prescription of real rights shall have no effect as to purchasers and singular Successors unless ane Instrument be taken thereupon and registrat in manner forsaid But the said interruptions via facti shall only be effectuell as to the Heritor and Possessor of the ground but no others And His Majestie with advice forsaid Ordaines all Summonds with their Executions or Instruments already raised or taken for Interruption as said is to be registrat as above prescribed within a year after the date of this Act under the same Certification as is above exprest.<sup>350</sup>

20. *ACT anent vitious Intromettors.*

OUR SOVERAIGN LORD considering that many times the nearest of kin and others doth Intromet with the moveables of persons deceist without Confirmation and imbazles the saids moveables in defraud of lawfull Creditors; and when they come to be pursued at the instance of any of the Creditors for being lyable to the defuncts debt as vitious intromettors they ordinarily defend themselves with this pretence that there is ane Executor Creditor confirmed befor the intending of the action Whereas a third party Confirming Executor Creditor in a particular subject ought not to free the intromettor from the passive title of vitious intromissions when the intromettor has no right from the Executor Creditor Therfor for obviat-

<sup>349</sup> The act which is here partly repealed is 1686, ch. 33. See A. S., 17th January 1786.

<sup>350</sup> See 1669, ch. 15, and the latter part of the note annexed thereto.

ing such frauds in time comeing His Majestie with advice and consent of the Estates of Parliament Statutes Ordaines and Declares that the nearest of kin and others intromettors with the moveables of any defunct who are not Executors Confirmed to them nor hath right from the Executor Creditor befor his intromission are and shall be lyable as vitious intromettors notwithstanding that there is a third party Confirmed Executor in a particular debt or subject.<sup>351</sup>

#### 21. *ACT anent Aliments.*

OUR SOVERAIGN LORD considering that Actions for aliment of their own nature cannot abide delay but ought to be discust summarly Therfor His Majestie with advice and consent of the Estates of Parliament doth hereby appoint the Lords of Session to discuss all actions of aliment to be intended before them summarly without abideing the course of the Roll And likeways hereby prohibite and discharge the saids Lords to grant any aliment to any person upon petition or bill notwithstanding there be a depending proces betwixt the parties concerned unless there be a Lybelled Summonds raised and execute for that effect which Lybell after it is seen and returned is to be discussed summarly as said is.<sup>352</sup>

#### 25. *ACT anent Blank Bonds and Trusts.*

OUR SOVERAIGN LORD considering that the Subscribeing of Bonds Assignations and Dispositions and other deeds blank in the name of the person in whose favors they are granted as also that the intrusting of persons without any declaration or backbond of Trust in writing from the persons intrusted are occasions of fraud as also of many pleas and contentions Doth therfore with advice and consent of the Estates of Parliament Statute and Ordain that for hereafter no bonds assignations dispositions or other deeds be subscribed blank in the person or persons name in whose favors they are conceived and that the forsaied person or persones be either insert before or at the Subscribeing or at least in presence of the same witnesses who were witnesses to the Subscribing before the delivery Certifieing that all writs otherways Subscribed and delivered blank as said is shall be declared null, And farder that no action of declarator of trust shall be sustained as to any deed of trust made for hereafter except upon a declaration or backbond of trust lawfully Subscribed by the person alleadged to be the trustee and against whom or his heirs or assigneyes the Declarator shall be intended or unless the same be referred to the oath of party simpliciter Declaring that this Act shall not extend to the indorsation of Bills of Exchange or the notes of any tradeing Company.<sup>353</sup>

#### 26. *ACT for Settling of Schools.*

OUR SOVERAIGN LORD considering how prejudiciall the want of Schools in many places have been and how beneficiall the establishing and settleing thereof in every paroch will be to this Church and Kingdom Therfor His Majestie with the advice and consent of the Estates of Parliament Statutes and Ordains that there be a School settled and Established & a Schoolmaster appointed in every paroch not already provided by advice of the Heritors and Minister of the paroch And for

<sup>351</sup> In reference to this act, see Ersk. b. iii. tit. ix. § 49, *et seq.*

<sup>352</sup> For the modern procedure in actions of aliment, see A. S., 11th July 1828, § 98-100, inclusive, and Darling's Forms of Process, p. 482, *et seq.*

By 1st Will. IV. ch. 69, § 32, actions of aliment are now competent in the Sheriff Court.

<sup>353</sup> In reference to this act, see Ersk. b. iii. tit. ii. § 6.

that effect that the Heritors in every paroch meet and provide a commodious house for a school and settle and modifie a sallary to a Schoolmaster which shall not be under one Hundred merks nor above two Hundred merks to be payed yearly at two terms Whitsunday and Martinmas by equall portions, and that they stent and lay on the said sallary conform to every Heretors valued rent within the paroch allowing each Heretor relieff from his tennents of the half of his proportion for settling and maintaining of a School and payment of the Schoolmasters sallary which sallary is declared to be by and attour the casualities which formerly belonged to the Readers and Clerks of the kirk session; And if the Heritors or major part of them shall not convene or being convened shall not agree among themselves, then and in that case the Presbitrie shall apply to the Commissioners of the Supply of the shire who or any five of them shall have power to establish a school and settle and modifie a sallary for a Schoolmaster not being under one hundred merks nor above two hundred merks yearly as said is and to stent and lay on the samen upon the Heritors conform to their valued rent which shall be also valid and effectuell as if it had been done by the Heretors themselves And because the proportion imposed upon every heritor will be but small, Therfor for the better and more ready payment thereof It is Statute and Ordained that if two terms proportions run in the third unpaid then these that so fail in payment shall be lyable in the double of their proportions then resting and in the double of every terms proportions that shall be resting thereafter ay and while the Schoolmaster be compleatly payed and that without any defalcation And that Letters of Horning and all other Executorials necessar be directed at the instance of the Schoolmaster for payment of the said stipend and double of the proportions in manner forsaid And discharges all Suspensions to pass against Schoolmasters of the sallaries except upon consignation or a valid discharge And if any suspension be past that the Lords discuss the samen summarly without abiding the course of the Roll And it is hereby Declared that Liferenters dureing their lifetime shall be lyable in payment of the proportions imposed on the Lands liferented and Execution in manner forsaid shall pass against them for that effect and the Heritors shall be alwayes free of the same dureing the Liferenters lifetime and if any person find themselves wronged by the inequality of the proportions imposed it shall be lawfull for them to seek redress therof befor the Commissioners of Supply Sheriff of the shyre or other Judge competent within the space of year and day after the imposing of the stent and no otherwayes As also it is declared that the provideing of the said Schools and Schoolmasters is a pious use within the paroch to which it shall be lawfull and leisum to Patrons to imploy the vacant stipends as they shall see cause excepting from this Act the Bounds of the Synod of Argyle in respect that by a former Act of Parliament in the year one thousand six Hundred and ninety the vacant stipends within the said bounds are destined for the setting up and maintaining of Schools in manner therin mentioned And the said vacant stipends are hereby expressly appointed to be thereto applyed at the sight of the Sheriff of the bounds forsaid And lastly his Majestie with advice and conscnt forsaid Ratifies and Approves all former Lawes Customs and Constitutions made for establishing and maintaining of Schools within the Kingdom in so far as the same are not altered nor innovat by this present Act.<sup>354</sup>

<sup>354</sup> The subject of this act is more fully regulated by 43d Geo. III. c. 54. See Dunlop on Parochial Law, p. 466-7.

29. *ACT for the better provideing the Poor and repressing of Beggars.*

OUR SOVERAIGN LORD with advice and consent of the Estates of Parliament Ratifies Approves Renews and Revives all Acts of Parliament and Proclamations of Council for maintaining of the Poor and repressing of Beggars And ordains them to be put to full and vigorous Execution in all points; And farder empowers and authorizes the Lords of his Majesties Privy Council (if they shall think needfull) to grant ane Commission to a certain number of persons to be supervisors & inspectors of the poor either in particular Shires and Burghs or over the Kingdom and to make and emit such Acts and Constitutiones not inconsistent with the Standing Lawes as shall be thought necessar for the more effectuell employing and maintaining of the Poor and freeing the countrey of vagabonds and idle beggars which Acts and Constitutions of the Lords of Privy Council shall have the effect and force of Laws and shall only continue until the nixt Session of Parliament And the Estates of Parliament do humbly recommend to His Majestie to cause visit all Hospitalls and their rents and revenues with their rights and foundations to the effect that whatever lands tenements teyndes or others belonging to Hospitalls and any way misemployed impropriat or interverted may be restored and the saids haill lands tenements teyndes rents and revenues duely applied according to their foundations As also to inquire after all Mortifications to the effect they may be duely applied conform to the will of the Mortifier.<sup>255</sup>

31. *ACT against Prophaneness.*

OUR SOVERAIGN LORD with advice and consent of the Estates of Parliament, Ratifies Renews and Revives all former Laws and Acts of Parliament made against drunkenness Sabbath breaking swearing fornication uncleanness mocking and reproaching Religion and the exercises thereof and generally all the Laws made against Prophaneness and Ordains the same to be put to full and vigorous execution And farder considering how much Prophanity and Immorality do abound over all the Nation to the dishonour of God, reproach of Religion and the discredit and weakening of the Government notwithstanding of the many good Laws that have been made against prophaneness Therefore and for the better and more expedit and effectuell execution of the saids Laws Statutes and Ordains that in every Paroch where either Sheriff Sheriff deput Lord of Regality or Regality deput or Baillies or Baillie deputs Stewarts or Stewart deputs or Magistrats of Burghs happen to reside They shall and are hereby oblidge and required to put the said Laws against Prophanity and Immorality to due and full execution at the instance of any person whatsoever who shall pursue the same Certifieing them if they failzie therin either by themselves or their deputs to be by them nominat for the said Paroch the Lords of His Majesties Privy Council will appoint and nominat Baillies in that part to judge and execute the Laws in their place And as to such Paroches wherein none of the Magistrats forsaid haveing ordinary jurisdiction do reside His Majestie with advice and consent forsaid Statutes and Ordains that in every such paroch the forsaid persons haveing ordinary jurisdiction over the same shall appoint deputs for the said paroches with the power and for the end forsaid such as shall be named to them by the Heritors and Kirk Session therof for that effect Certifieing the forsaid Magistrats that if they refuse to grant the said deputations when required they shall not only be lyable in the Sum of one

<sup>255</sup> In reference to this act, see Dunlop on Parochial Law, p. 328.

hundred pounds but that the Lords of Councill will grant the saids deputations by them refused And His Majestie with consent foresaid discharges Advocations of the saids processes against Prophanity and Immorality to be intented before the saids Judges and Deputs in the saids Paroches simpliciter And likewayes all Suspensions of their Sentences without Consignation or liquidat Discharges And farther Ordains that in case of calumnious suspending the Lords of Session Decern a third part more then is Decerned for Expences And Ordains the fines to be instantly payed to the Paroch Collectors for the poor or the party to be imprisoned till sufficient Caution be found for payment of the saids fines or otherwayes to be exemplarly punished in his person in case of inability to pay the fine And that no pretence of different perswasion in matters of Religion shall exeem the delinquent from being censured and punished for such Immoralities as by the Laws of this Kingdome are declared to be punishable by fineing And lastly it is declared that nothing in this Act shall hinder or impede all ordinary Magistrats and Judges to exerce their Jurisdiction in the premisses as accords And his Majestie and the said Estates of Parliament Recommend to the Lords of Privy Councill to take such farther effectuell course as shall be found requisite for restraining and punishing of all sorts of profanity and wickedness and for encourageing and rewarding of such as shall be employed in the execution of the saids Laws either out of the fines that shall be uplifted for the foresaid transgressions or otherwayes as they shall think fit And does hereby strictly Require and Command all persons to whom it doth or may belong to perform their dueties in the premisses punctually as they will be answerable.<sup>356</sup>

### 32. *ACT anent the Aliment of poor Prisoners.*

OUR SOVERAIGN LORD considering that generally the Burghs of this Kingdom havers of Prisones are troubled and overcharged with prisoners thrust into their prisones who have nothing to maintain themselves but must of necessity either starve or be a burden upon the Burgh Doth therfor and for Remeid thereof with advice and consent of the Estates of Parliament Statute and Ordain that where any person is made or shall be made Prisoner for a Civill debt or cause and shall be found or become so poor that he cannot aliment himself Then and in that case it shall be leisum to the Magistrats of the Burgh where the prisone is, to which the said prisoner is committed upon the complaint of the said Prisoner and his makeing faith in their presence that he hath not wherewith to aliment himselfe to intimat the same to the Creditors one or more at whose instance the said Prisoner was committed or is detained and to require him or them either to provide and give Security for an aliment to him not under three shillings per diem or else to consent to his Liberation which if the said Creditors refuse or delay to do within the space of ten dayes thereafter then it shall be leisum to the said Magistrats to set the said poor indigent Prisoner at liberty without any hazard of being lyable for the debt and cause of the imprisonment or to any other censure whatsoever Providing allwayes that if any other Creditor at whose instance he is made or detained Prisoner give surety to aliment the said indigent debtor he shall still be kept Prisoner as before, as also that Prisoners for Criminall causes be in the same state as formerly.<sup>357</sup>

<sup>356</sup> In reference to this act, see *Jobson & Hay v. Lambert*, 29th November 1828, 7 S. & D., p. 83.

<sup>357</sup> This act is amended by 6th Geo. IV. ch. 62.

35. *ACT against Killers of Black Fish and Destroyers of the Fry & Smolts of Salmond.*

OUR SOVERAIGN LORD Considering the great advantage that redounds to this Kingdom by the Salmond fishing therof and that the same is much prejudged by the Killing of Black Fish and Kipper in forbidden times and by destroying the fry and smolts of Salmond with Creills at Miln dams and other engynes; For Remeid wherof his Majestie with advice and consent of the Estates of Parliament Does, Ratifie Confirm and Approve the hail former Lawes and Acts of Parliament made anent the Killing of Salmond Kipper and Black Fish in forbidden tymes, and the killing and destroying of the Fry and Smolts of Salmond: And hereby strictly commands and Requires the severall Judges to whom the Execution of the foresaids Lawes are committed to execute the same with all rigour and to Exact the penalties allowed by Law as they will be answerable at their highest perill; And in case any persons who shall be found guilty of the contravention of any of the former acts made against Killers of Kipper or Black fish or destroyers of the fry or smolts of Salmond, shall not be able to pay the pecunial fines allowed by Law That the Judge before whom the person so guilty shall happen to be convict may punish the delinquent corporally or by banishment as he shall think fit Or otherwayes if the delinquent be found fit to serve in the Recruits that he be delivered to any of the Officers of his Majesties forces for the use of his Majesties service And farder his Majestie and Estates of Parliament (for the more effectuall discovery of the Persons guilty of Killing of Kipper or Black fish and destroying the fry and smolts of Salmond) Do hereby allow the half of the fines to be imposed by vertue of this or former Acts to be payed to any person who shall make discovery of the delinquents And in respect that the Salmond fishing within this Kingdom is much prejudged by the height of miln dams that are carried through the rivers where salmond are taken His Majestie with consent of the Estates of Parliament Ordains a constant slop in the mid stream of each miln dam dyke and if the dyke be settled in severall grains of the river that there be a slop in each grain (except in such rivers where cruives are settled) and that the said slop be als big as conveniently can be allowed Provideing allwayes the said slop prejudice not the going of the milns situat upon any such rivers, Likeas His Majestie with consent foresaid Discharges all fishing at such miln dam dykes with nets stented or otherwayes or any other Engynes whatsoever under the pains inflicted by this and former Acts against killers of Black fish and destroyers of the fry of Salmond.<sup>358</sup>

38. *ACT anent Inland Bills and Precepts.*

OUR SOVERAIGN LORD with advice & consent of the Estates of Parliament Statutes Enacts and Declares that the same Execution shall be competent and proceed upon Inland Bills or Precepts as is provided to pass upon Forraigne Bills of Exchange by the twentieth Act of the third Parliament King Charles Second holden in anno 1<sup>m</sup> vj<sup>c</sup> and Eighty one which Act is hereby Extended to Inland Bills and Precepts in all points.<sup>359</sup>

<sup>358</sup> In reference to this act, see the latter part of the note annexed to 12th act of 1st Parliament of James I. in 1424.

<sup>359</sup> See note annexed to 1681, ch. 86.

41. *ACT anent Registration of Writts after the Granters decease.*

OUR SOVERAIGN LORD with advice and consent of the Estates of Parliament Statutes and Declares that all Bonds Dispositions Assignations Contracts and other Writts Registrable may be Registrat after the Granters death sicklike and in the same manner and shall make als much faith in Judgement and outwith the same as if the saids Writts were Registrat before the granters decease notwithstanding of whatsoever Laws or customs in the contrair.

44. *ACT declaring Minors free from Personall Execution for Civill Causes dureing their Pupillarity.*

OUR SOVERAIGN LORD with advice and consent of the Estates of Parliament Statutes and Ordains that no Minor within the years of Pupillarity be lyable to Caption or Warding for any debt or civil Cause But declares all such Minors in respect of their nonage and dureing their Pupillarity forsaid to be exempted and freed from the same.

45. *ACT against false Coyning and Clipping of Money.*

OUR SOVERAIGN LORD considering that the Coyning of false Money and the Clipping and diminishing the current Coyn of this Kingdome have of late been much more frequent then formerly and ought to be severely punished, Therefore His Majestie with advice and consent of the Estates of Parliament not only Ratifies and Approves all former Laws and Acts of Parliament against Coyners of false money but further Statutes Ordaines and Declares that whosoever for hereafter shall be guilty art or part of Coyning false money or of clipping washing rounching razing fying or any other manner of way diminishing or falsifieing any of the proper money or Coyn of this Kingdom or allowed to be current within this Kingdom or that hereafter at any time shall be the current money or coyn of this Nation shall be punished with the paines of death and confiscation of Moveables.<sup>340</sup>

## APUD EDINBURGH,

XIX DIE JULII, A.D. M,DC,XCVIII.

PARLT. 1st. SESS. 7th.

2. *ACT for preventing of Disorders in the Supplying and Planting of vacant Churches.*

OUR SOVERAIGN LORD with advyce and consent of the Estates of Parliament for Remeeding the godless abuse of rabling that of late hath so frequently happened in opposition to Ministers orderly sent to Supply vacant Churches and for facilitating of the supplying and planting of vacant Churches and removeing all impediments and disorders that may obstruct the same strictly Prohibites and Discharges all persons whatsoever to make any opposition by rableing tumult or any other manner of violence to any Minister lawfully authorized and sent to preach at

<sup>340</sup> In reference to this act, see Hume, vol. i. p. 532, *et seq.*



any vacant Church within the Kingdom either for supplying of the said vacancy or to exerce the Ministeriall function as fixed Ministers of the paroch and that under the pains of a Hundred pounds upon every Heretor or Lyferenter and of fifty merks upon any other unlanded person toties quoties And for such delinquents as are not able to pay that they shall be punished in their persons as the Lords of Privy Councill shall see cause; And farder for the better repressing of the forsaide opposition by rableing tumult or any other manner of violence His Majestie with advyce and consent forsaide Ratifies and Extends to the case thereof the Seventh Act of the Parliament 1<sup>st</sup> vj<sup>th</sup> and thirty three Intituled Act anent Invadeing of Ministers and that in manner and with the alterations following: And Therefor Statutes and Ordains that wherever any such rableing or tumult happens the Heretors and Lyferenters in whose bounds whither within or without the parish any of the persons delated and accused as guilty of or accessory to the same dwells or resides shall be holden upon intimation made to them by the Minister injured or by any in name of the Presbitry who sent him to produce the forsaids persons guilty and that they may be convened befor the Lords of his Majesties Privy Councill for that effect Certifieing the said Heretors and Liferenters that if they either failzie to produce the said persons if resideing within their bounds when the forsaide intimation shall be made or if they shall suffer the said persons withdrawing or absenting the time of the said intimation thereafter to reside and haunt openly within their bounds by the space of twenty dayes then and in these cases the said Heretors and Liferenters shall be esteemed Connivers with the delinquents and lyable as guilty art and part with them in their forsaide delinquency, And because notwithstanding of the Act & Proclamation of Councill made in the year 1690 for the delivering of the Keyes of vacant Churches to the Presbitries or the persons haveing their order the persons havers thereof do shift the same from hand to hand Therefore his Majestie with advice and consent forsaide Statutes and Ordains that where and whenever after requisition made by the Presbitry to the beddell or havers of the said keyes the same are refused and not given up then the nixt Magistrat Sherriff Lord of Regality or Baillie and their deputs or any Justice of Peace when required by the Presbitry or any from them shall repair to the said Kirk and there make open and patent the doors thereof and put new locks upon the same and deliver the Keyes to the said Presbitry or their order for their free use makeing of the same Certifieing the said inferior Magistrat who shall refuse when required to make the Church patent in manner forsaide he shall be lyable in the fyne of one hundred pounds Scots to be inflicted upon him by the Lords of Privy Councill, for the use of the poor of the paroch by and attour the Presbitries Expences.<sup>361</sup>

### 3. *ACT against Pocknet fishing upon the Water of Forth.*

HIS MAJESTIE with advyce and consent of the Estates of Parliament Prohibites and Discharges all Salmond fishing or other fishing whatsoever in the River of Forth above the Pow of Alloway on both sides of the said River with Pocknets Herry water nets or other engynes or devyces whatsoever not expressly allowed by Law, and to the prejudice of the Heritors and their rights of Salmond fishing in the said River; And Impowers Warrands and Commands the Sherriff principall of the Shyre of Stirling Baillie of the Water of Forth and his Deputs to

<sup>361</sup> In reference to this act, see note annexed to 1633, ch. 7, which is here ratified and extended.

10. *ACT anent Quartering for Deficiency.*

OUR SOVERAIGN LORD with advyce and consent of the Estates of Parliament for the farder relief of the Countrey as to Quarterings in the case of deficiency provided for by the third Act of the third Parliament of King Charles Second Statutes and Ordains that wherever parties are sent to quarter upon deficient in manner provyded in the forsaid Act then and so soon as it shall be intimat to the said partie that the person or persons deficient have made payment of their deficiency less or more and the Collectors discharge shoven for the same the said Quartering as for deficiency shall cease accordingly and the party quartered shall have no further allowance as for deficiency but shall be oblidge to remove or to pay for their Quarters as in the case of common Quartering untill they be removed And the Commissioners of Supply of the respective Shyres are to see these presents punctually execute.<sup>366</sup>

11. *ACT for the Ease of small Vassalls of Bishops Lands now holden of the King.*

OUR SOVERAIGN LORD with advyce and consent of the Estates of Parliament for the farder ease of small Vassalls of Lands and others now holden of his Majestie by vertue of the twenty nyth Act of the second Session of this current Parliament intituled Act anent the superiority of Lands and others which formerly held of Prelats or Bishops and their Chapters to be now holden of the King and Queen Statutes and Ordains that not only the Signatures and Charters of the said Lands the valuation whereof is but one hundred pound Scots or under shall pass the Great Seal per saltum without passing any other Seal and that gratis without payment of Composition in Exchequer or other dues sicklyke as is provyded by the thirty second Act of the said Session of Parliament in favors of Vassalls of the said Lands where their valuation is only ten pound Scots or under But lykewayes that in case of their deceiss the speciall services and precepts for infesting of their heirs shall be expedie in his Majesties Chancellary for the sum of ten merks for all dues and drink money and that they shall be free of paying a seasine ox to the Sherriff or Baillies of Regality and the dues to be payed by them to Sherriffs or Baillies of Regaltie for equees shall not exceed the twenty part of their few dutie and this Act to be without prejudice to the other small Vassalls of the said Lands of the other priviledges provyded to them by the forsaid thirty two Act of the second Session of this Parliament.

35. *ACT for preserving of Planting.*

OUR SOVERAIGN LORD with advyce and consent of the Estates of Parliament Ratifies and Approves all former Laws and Acts of Parliament made for planting and incloseing of ground And for makeing the samine more effectuell Statutes and Ordains that all tennents and cottars shall preserve and secure all growing wood & planting that is upon the ground they possess that none of it "Quarters and anent due paying of their Majesties forces," which, although mostly temporary, is considered still in force, in some particulars, respecting the quartering of and finding carriages and horses for soldiers. See Tait's Justices of Peace, Art. "Soldiers." The principal legal provisions with regard to soldiers are now contained in the Mutiny Act, which is passed annually. See 3d and 4th Vict. ch. vi., which, however, provides (§ 52), "that it shall be lawful to billet officers and soldiers in Scotland, according to the provisions of the laws in force in Scotland at the time of its union with England; and no officer shall be obliged to pay for his lodging where he shall be regularly billeted, except in the suburbs of Edinburgh."

<sup>366</sup> See note annexed to last act.

9. *ACT anent Quartering of Souldiers.*

OUR SOVERAIGN LORD with advyce and consent of the Estates of Parliament for the ease of the Countrey in the matter of Quartering of Souldiers and for preventing the abuses thereof Statutes and Ordains that in tyme of peace within the Kingdom Souldiers in their locall Quarters shall only be quartered by these to whom the direction thereof appertains in Burghs Royall or of Regality or the most capable mercat Touns within the Shyres where their quartering shall be ordered And that they shall not be quartered upon Tennents in dispersed onsteads in the Countrey upon pretence either of stuble quarters or of any other cause whatsoever excepting allenarly quarterings for deficiency as the same are regulat by former Acts of Parliament And farder it is Statute that wherever common souldiers are quartered either in locall or transient quarters the Landlord shall not be obliged to furnish them either coall or candle save according to the ordinar condition of the house and after the manner of the ordinary domesticks Which orders both officers and souldiers concerned are hereby commanded to obey as they will be answerable And farder His Majestie with advyce and consent forsaid Statutes & Ordains that for all abuses and misdemaners committed by souldiers in their locall or transient quarters against any of his Majesties leidges who are not souldiers they may either be complained upon to their officers or in the option of the party lesed conveyened upon summar complaint befor the Justice of Peace or the ordinary Judges of the bounds and their deputes befor whom the officer shall be obliged under the pain of one hundred merks and reparation of damnages toties quoties to sist them that they may be lyable to their sentences And His Majestie commands all officers in His Ma<sup>ties</sup> service to be carefull to cause all souldiers under their command to go to church and attend divine worship duely upon the Lords day As also to submit to the Ministers examinations and to church discipline and other censures in the place where they are quartered and that the officers themselves shew good example as they will be answerable And lastly His Majestie with advyce and consent forsaid most strictly forbids all free quarter and all abuseing or oppression of His Majesties leidges by souldiers in their quarters or out of them and Ratifies all former Acts of Parliament against free quarters and abuses of quartering and particularly the 4 Act of the 4 Session of this current Parliament And farder for rendering more effectuell the allowance thereby appointed to be given by Collectors of shyres and the Generall Receivers of what happens to be taken on by officers or souldiers or of what damnages are done by them in their quarters either locall or transient or for penalties of officers for not presenting souldiers as above His Majestie with advyce and consent forsaid Statutes and Ordains that any Collector refuseing the said allowance in the order prescribed in the said Act shall be lyable to the party lesed in the sum of one hundred pounds Scots toties quoties at the sight of any two of the Commissioners of assessment and that the Generall Receiver refuseing the forsaid allowance to the Collectors shall be lyable not only to the pains contained in the said Act but in the sum of fyve hundred merks over and above toties quoties at the sight of the Lords of his Majesties Thesaury and Exchequer And it is hereby Declared that the same execution shall be granted for payment of carriages furnished to souldiers as for their intertainment in their quarters And His Majestie Recommends it to the Lords of his Privy Councill to cause this Act be punctually observed and to punish all the transgressors thereof of whatsoever degree or quality.<sup>365</sup>

<sup>365</sup> Reference is made to Mr Thomson's edition of the Scots Acts, vol. ix. p. 255, May 11. 1693, for the statute particularly above ratified, intituled, "Act against false Musters and free

10. *ACT anent Quartering for Deficiency.*

OUR SOVERAIGN LORD with advyce and consent of the Estates of Parliament for the farder relief of the Countrey as to Quarterings in the case of deficiency provided for by the third Act of the third Parliament of King Charles Second Statutes and Ordains that wherever parties are sent to quarter upon deficient in manner provyded in the forsaid Act then and so soon as it shall be intimat to the said partie that the person or persons deficient have made payment of their deficiency less or more and the Collectors discharge shoven for the same the said Quartering as for deficiency shall cease accordingly and the party quartered shall have no further allowance as for deficiency but shall be oblidged to remove or to pay for their Quarters as in the case of common Quartering untill they be removed And the Commissioners of Supply of the respective Shyres are to see these presents punctually execute.<sup>386</sup>

11. *ACT for the Ease of small Vassalls of Bishops Lands now holden of the King.*

OUR SOVERAIGN LORD with advyce and consent of the Estates of Parliament for the farder ease of small Vassalls of Lands and others now holden of his Majestie by vertue of the twenty nynth Act of the second Session of this current Parliament intituled Act anent the superiority of Lands and others which formerly held of Prelats or Bishops and their Chapters to be now holden of the King and Queen Statutes and Ordains that not only the Signatures and Charters of the said Lands the valuation whereof is but one hundred pound Scots or under shall pass the Great Seal per saltum without passing any other Seal and that gratis without payment of Composition in Exchequer or other dues sicklyke as is provyded by the thirty second Act of the said Session of Parliament in favors of Vassalls of the said Lands where their valuation is only ten pound Scots or under But lykewayes that in case of their deceiss the speciall services and precepts for infesting of their heirs shall be expedie in his Majesties Chancellary for the sum of ten merks for all dues and drink money and that they shall be free of paying a seasine ox to the Sherriff or Baillies of Regality and the dues to be payed by them to Sherriffs or Baillies of Regaltie for equees shall not exceed the twenty part of their few dutie and this Act to be without prejudice to the other small Vassalls of the said Lands of the other priviledges provyded to them by the forsaid thirty two Act of the second Session of this Parliament.

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"Quarters and anent due paying of their Majesties forces," which, although mostly temporary, is considered still in force, in some particulars, respecting the quartering of and finding carriages and horses for soldiers. See Tait's Justices of Peace, Art. "Soldiers." The principal legal provisions with regard to soldiers are now contained in the Mutiny Act, which is passed annually. See 3d and 4th Vict. ch. vi., which, however, provides (§ 52), "that it shall be lawful to billet officers and soldiers in Scotland, according to the provisions of the laws in force in Scotland at the time of its union with England; and no officer shall be obliged to pay for his lodging where he shall be regularly billeted, except in the suburbs of Edinburgh."

<sup>386</sup> See note annexed to last act.

shall be cut broke or pulled up by the roots or the bark peilled off any tree and that under the pain to be exacted by their masters allennarly of ten pounds Scots for each tree within ten years old and twenty pound Scots for each tree that is above the said age of ten years unless the samine be done by warrand and order of the said master and heretor of the ground And ordains the tennent to be lyable for his wife children and servants or any others within his familie that shall contra-veen this present Act.<sup>367</sup>

38. *ACT Regulating the Trade betwixt Burghs Royall & Burghs of Regality Barony and others.*

OUR SOVERAIGN LORD for farder clearing of the trade allowed to Burghs of Barony and Regality or others who are not freemen of Burghs Royall Doth with advyce and consent of the Estates of Parliament Statute Enact and Declare that in time comeing the exporting of the native goods from this Kingdome and the importing of forraign goods into the Kingdom is the priviledge of the freemen and burgesses of Burghs Royall and of such to whom the said priviledge shall be communicat exclusive of all others excepting the exportation of corns cattle horse nolt sheep coal salt mettall and mineralls lyme and stone And but prejudice to Noblemen and Barons to export the native products growing or manufactured in their lands and to import forraign commodities for their own use and not for sale answering to the value of such export Excepting also the priviledges granted by Law to declaired Manufactories and Societies for fishing And farder it is declared That in time comeing the Inhabitants of Burghs of Regality and Barony and others may trade buy and sell all native commodities as also retails forraign Commodities provideing they buythese forraign Commodities from some of the freemen of the Burghs Royall or of such Burghs who shall get the forsaid communication and who payes scot and lot within Burgh and no otherwayes And the Grant of these priviledges in favors of the Royall Burrows shall have execution in the way and manner prescribed by the Twelfth Act Second Session of this current Parliament anno I<sup>m</sup> vj<sup>c</sup> and nynety in favors of Royall Burrows.<sup>368</sup>

39. *ACT for settleing the Communication of Trade.*

OUR SOVERAIGN LORD for terminating the differences that have lately arisen betwixt the Burghs Royall and Burghs of Regality & Barony and others on the account of the Communication of Trade appointed by the Act of Parliament I<sup>m</sup> vj<sup>c</sup> and nynety three and especially about the subdivision of the Ten pound of the Hundfed pounds of the Taxt roll of the Burghs Royall declared by the said Act to be the proportion to be undertaken by the said Burghs of Regality and Barony & others who were to partake of the said Communication dureing the space and years of M<sup>r</sup> John Buchans contract mentioned in the said Act As also what should be the quota of the said Taxt Roll which should be laid for hereafter upon the said Burghs of Regality & Barony and others who should partake of the said Communication and how the same should be subdivyded and proportioned amongst them Doth with the advyce and consent of the Estates of Parliament Ratifie and Confirm the Communication of trade ordained by the forsaid Act and that in the terms de-

<sup>367</sup> In reference to this act, see Erskine, b. iv. tit. iv. § 39.

<sup>368</sup> In reference to this act, which virtually supersedes many previous acts on the same subject, see General Burgh Municipal Report, 1835, p. 76, *et seq.* See also 1672, ch. 5, and 1690, ch. 15, two previous statutes relating to the subject of this act, and which it is considered unnecessary to print in the present publication.

clared for hereafter by another Act of this Session of Parliament intituled Act for Regulation of trade betwixt Burghs Royall and Burghs of Regality &c. And for Clearing of the forsaide Questions and makeing of the said communication more effectuell His Majestie with advyce and consent forsaide Gives full Power Warrant and Commission to such persons and quorum of them as shall be nominat by His Majestie to meet and convene at Edinburgh the       day of       and thereafter at such times and places as they themselves shall appoint With full power to the said Commissioners to consider as to bygones preceeding the expiration of M<sup>r</sup> John Buchans contract how the said ten pounds together with M<sup>r</sup> Johns expences as it shall be modified by the said Commissioners may be most equally subdivyded and proportioned amongst the said Burghs of Regality and Barony and other unfree traders as well for the part of such unfree traders as have got the benefite of the said Communication as for the part of such as have not got it that they for the space forsaide may be fully liberat and discharged of all hazard of unfree tradeing and to subdivide and proportion the same accordingly As lykewayses to consider for the year since the expiration of M<sup>r</sup> John Buchans contract to Lambmass last bypast and also for hereafter what quota or part of the said Taxt Roll of one Hundred pounds of the Burghs Royall should be laid upon the unfree traders of this Kingdom And to subdivide and proportion the same upon the said Burghs of Regality & Barony and others who have got or shall accept and get the benefite of the said Communication as they shall find just And the said Commissioners are hereby empowered to call all persons haveing interest before them and to take all manner of tryall necessar in the premisses and to cite witnesses and ishue out diligences requisite for that effect Declairing that their Sentences and Decrees for stateing and divideing in manner forsaide shall have the force of a Decreet of Parliament and that Letters and all other execution as against Burghs Royall shall be direct thereupon as effeirs And farder His Majestie with advyce and consent forsaide Statutes that the said Quota and Subdivision being once stated all persons inhabitants of the said Burghs partakeing of the Communication shall be lyable to be stented for the Quota appointed as the use is in Burghs Royall As also that for thereafter the said Burghs shall be lyable to the determination of the Conventions of Royall Burrows as to the alterations of their Quota as other Burghs Royall Provydeing allways that the Burgh to be altered be first called and that the said alterations shall not encrease the generall Quota laid upon unfree trade As lykewayses that in case of inequality the Burgh lesed may apply for remedy to the Parliament Lykeas in case of the increase or decrease of trade it is hereby Declared that the Burghs concerned whether Royal or not may apply to the Parliament even as to the general Quotas.<sup>369</sup>

#### 40. *ACT anent the Poor.*

OUR SOVERAIGN LORD with advyce and consent of the Estates of Parliament Ratifies and Approves all former Acts of Parliament and Proclamations of Council for repressing of Beggars and for maintaining & employing of the Poor and particularly the Act of Parliament James the Sixth Parliament sixth, Cap: seventy four intituled Act for punishment of strong and idle beggars and releif of

<sup>369</sup> In reference to this act, see General Burgh Municipal Report, 1835, p. 77. See also proceedings of the Commission appointed by this act, in appendix to vol. x. of Mr Thomson's Edition of the Scotch Acts.

the poor and impotent Act James Sixth Parliament twelvth Cap : one hundred fourty seven for punishment of masterfull beggars and relief of the poor Act James Sixth Parliament fyfeteenth Cap : two hundred sixty eight that strong beggars vagabounds and Egyptians should be punished Act James Sixth Parliament sixteenth Cap : nyneteenth Ratifieing the former Acts against strong and idle beggars Act James Sixth Parliament twenty two Cap : tenth anent the poor Whereby it is Statute that His Majesties Leidges at sight of Provost and Baillies in Burgh or of Kirk sessions either to Burgh or Landward may receive the children of indigent parents with consent of their parents if they any have and if they be under fyfeteen years and with their own consent if they be above fyfeteen years and breed them either in their houses or at callings and that upon a testimoniall hereof the said children shall be astricted to their said masters their heirs and assigneyes in all manner of service and be under all manner of discipline (lyfe and torture excepted) untill they be past thirty years of age And that all their gain by their travel shall be their masters and they shall be oblidged to refund his damage for their absence And who keeps them from their masters after requisition for delivery within twelve hours shall be lyable in ten shilling per diem beside redelivery with the hail other heads mentioned in the said Act. Act Charles Second Parliament One thousand six hundred and sixty three Cap : sixteen anent the poor whereby the Act immediatly above mentioned is Ratified with this addition that all masters of Manufactories may with advyce of the Magistrats of the place sease vagabonds and idle poor persons and imploy them in their work and exact of the paroches where they were born or if the same be not known of the paroches where they have haunted for three years before two shilling per diem for the nixt three years and thereafter may retain them seven years in their service for meat and cloaths with the hail other heads contained in the said Act. Act Charles Second Parliament second one thousand six hundred and seventy two Cap : eighteenth for establishing Correction houses for idle beggars and vagabonds in the Burghs upon the allowance and in manner fully set down in the Act As also the Acts made anent the Poor in this current Parliament viz. Act seventeenth July I<sup>m</sup> vj<sup>e</sup> and nynety fyve Ratifieing and Reviveing the former Acts of Parliament and Acts and Proclamations of Councill for maintaining of the poor and repressing of beggars and empowering the Lords of His Majesties Privy Council to take the most effectuell course to make the said Acts and Proclamations effectual and Act nynth October I<sup>m</sup> vj<sup>e</sup> and nynety six As also all Proclamations of Council for the ends forsaid and particularly the Proclamation anent the Poor of the date the third day of March last bypast and the other Proclamations therein mentioned And ordains the said whole Acts of Parliament and Proclamations with the alterations only after-mentioned and such others as shall be found necessary to make the same effectuell to be put to full and vigorous Execution in all points And farder His Majestie for the better and more effectuell Execution of the forsaid Acts and Proclamations with advyce and consent forsaid Impowers and Authorises the Lords of His Majesties Privy Councill to grant Commissions one or moe to certain persons to be supervisors and inspectors of the Poor either in particular Shyres and Burghs or over the whole Kingdom with power to the said commissioners to cause put the said Laws and Acts of Parliament in Execution and particularly to cause the persons therein intrusted to do and perform their parts according as they are thereby enjoyned As also to cause the Burgh oblidged to build Correction houses by the forsaid Act of Parliament I<sup>m</sup> vj<sup>e</sup> and seventy two and Proclamation in March last to build them betwixt and

such dayes and in such order as they shall think fit and as the said Burghs are able to bear the same notwithstanding the dayes named in the said Act and Proclamation And generally the said Lords of His Majesties Privy Council to make and emit such Acts and Constitutions not inconsistent with the standing Laws as shall be thought necessary for the more sure employing and maintaining of the poor and freeing of the Countrey of vagabonds and idle beggars And which Acts and Constitutions shall only continue till the next Session of Parliament and the Estates of Parliament do again humbly Recommend to His Majestie to cause visit all Hospitalls and their rents rights and foundations conform to the Recommendation contained in the forsaid Act of Parliament 1<sup>m</sup> vj<sup>c</sup> and nynety six And lastly it is hereby Declaired that the Correction house ordained to be built at Duncie is to be built at Greenlaw which is now declaired to be the head Burgh of the shyre of Berwick.<sup>370</sup>

#### 41. *ACT against Personal Protections.*

OUR SOVERAIGN LORD the Kings Majestie with advyce & consent of the Estates of Parliament Statutes and Ordains that no Protection to be granted hereafter shall take effect to hinder any Creditor from using personall diligence against the debtor where the Creditor was not cited upon fyfeteen dayes to give in objections why the protection should not pass And where Creditors are cited to the granting of protections that their names and designations be particularly set down in the protection It is lykewayes Statute and Ordained that all protections to be granted in Parliament shall bear to be granted by the King with advyce and consent of the Estates of Parliament otherwayes to be voyd and null but prejudice to the Lords of His Majesties Councill Session and Exchequer and the Commissioners of Justiciary to grant protections conform to the power reserved to them by the Act of Parliament 1<sup>m</sup> vj<sup>c</sup> and Eighty one against personall protections and in terms thereof allenarly Lykeas His Majesty with advyce and consent forsaid Statute and Ordain that hereafter no person dureing the currency of and till he Renunce the benefite of his protection shall be capable to choise or be chosen a member of Parliament.<sup>371</sup>

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APUD EDINBURGH,

XXIX DIE OCTOBRIS, M,DCC.

PARLT. 1st. SESS. 9th.

#### 2. *ACT for Secureing the Protestant Religion & Presbyterian Government.*

OUR SOVERAIGN LORD with the advyce and consent of the Estates of Parliament Ratifies Approves and perpetually Confirms all Laws Statutes and Acts of Parliaments made for the establishing maintaining and preserveing of the true reformed Protestant Religion and for the true Church of Christ as at present owned and settled within this Kingdom; As likewayes for Establishing Ratifieing and

<sup>370</sup> In reference to this act, see Dunlop on Parochial Law, p. 328.

<sup>371</sup> Personal protections in favour of persons whose estates are sequestrated are regulated by 2d and 3d Vict. ch. 41. See also note annexed to 1681, ch. 11.



Confirming the Presbyterian Church Government and discipline that is to say the Government of the Church by Kirk Sessions, Presbitries Provincial Synods, and General Assemblies to be agreeable to the Word of God and the only government of Christs Church within this Kingdom And particularly without prejudice of the generality forsaied His Majestie with advice and consent forsaied Ratifies Approves and Confirms the fifth Act of the Second Session of this current Parliament intituled Act Ratifeing the Confession of Faith, and Settleing Presbyterian Church Government in the haill heads articles and clauses thereof as if at length herein set down ; But prejudice, nevertheless to the twenty seventh Act of the fifth Session of this present Parliament Intituled Act concerning the Church as to the allowance therein given to certain Ministers not actually assumed by the ordinary Church Judicatures under the conditions and provisions allwayes exprest in the said Act.

*6. ACT for preventing wrongous Imprisonments and against undue delays in Tryals.*

JANUARY XXXI, M,DCCI.

OUR SOVERAIGN LORD Considering it is the interest of all his good Subjects that the liberty of their persons be duely secured ; And that it is declared by the claim of right that the imprisonment of persons without expressing the reasons thereof and delaying to put them to tryal is contrare to Law Therefore His Majestie with advice and consent of the Estates of Parliament Statutes Enacts and Ordains that all Informers shall signe their Informations and that no person shall hereafter be imprisoned for custody in order to tryal for any crime or offence without a warrand in writ expressing the particular cause for which he is imprisoned and of which warrand the messenger or executor thereof before imprisonment or the keeper of the prison receiveing the same is hereby ordained to give a just double immediatly under his hand to the prisoner himselfe for the end after specified, Declareing that all warrands for imprisonment on the account forsaied either proceeding upon informations not subscribed or not expressing the particular cause shall be void and null and the Judge or Officer of the Law and all others whatsoever subscribeing the same and the Executor or keeper of the prison who shall receive and detain the person so wrongously ordered to be imprisoned or refuseing a double as said is, shall be lyable in the punishment of wrongous imprisonment hereafter exprest. And to the effect that persons who are or shall be imprisoned for custody in order to tryal may not be wrongously delayed and detained His Majesty with advice and consent forsaied Statutes & Ordains that all Crimes not inferring capital punishment shall be bailable : And for clearing and establishing the method of finding baill in such cases either before or after imprisonment His Majestie with advice and consent forsaied Statutes and Ordains that it shall be lawfull to the prisoner or person ordered to be imprisoned to apply to the Committer or Commissioners of Justiciary or other Judge competent for Cognition of the Crime and offer to find sufficient Caution that he the said prisoner or person ordered to be imprisoned shall appear and answer to any lybell that shall be offered against him for the crime or offence wherewith he is charged at any time within the space of Six moneths ; and that under such a penalty as the said Committer or the Lords of Justiciary or other Judge competent shall modify and appoint. And that upon the said application the said Committer or Lords

of Justiciary or other Judge competent shall first cognosce whither the Crime be capital or not in order to the finding baill allennarly; And if found bailable then he or they shall be oblidge to modifie the sum for which the baill is to be found within twenty four hours after the said petition is presented to him or them respectively The sum for which the baill is to be found not exceeding Six thousand merks for a nobleman three thousand merks for a landed Gentleman one thousand merks for any other Gentleman and Burgess and three Hundred merks for any other inferior person under the pain of wrongous Imprisonment And upon the parties finding sufficient baill under the penalty modified at the sight of the said Judge or Judicatory respective and delivering or offering the same to the Clerk and Instruments taken upon the delivery or offer of sufficient Caution the said Committer or Judicatory competent shall order his liberation or discharge his imprisonment if not incarcerat under the penalty of wrongous imprisonment: As likeways that sufficient baill under the penalty modified being offered to the Judge or Magistrat to whom the Execution of the warrand is directed the said Judge or Magistrat shall be oblidge and is hereby appointed and ordained to accept of the for-said baill and set the prisoner at liberty under the like penalty of wrongous imprisonment And His Majestie with advice and consent forsaid farder Statutes and Ordains that upon application of any prisoner for Custody in order to tryal whither for capital or bailable Crimes to any of the Lords of Justiciary or other Judge or Judicatory competent for judgeing the crime or offence for which he is imprisoned and the said prisoner his producing the said double of the warrand of his imprisonment under the Keepers hand the said Judge or Judicatory competent under the pain of wrongous imprisonment are hereby Ordained within twenty four hours after the said application and petition is presented to him or them to give out letters or precepts direct to messengers for intimating to his Majesties Advocat or Procurator fiscall and party appearing by the warrand to be concerned if any be within the Kingdom to fix a dyet for the tryal within sixty dayes after the intimation Certifieing his Majesties Advocat or Procurator fiscall and the said party concerned that if they failzie the prisoner shall be discharged and set at liberty without delay For doing whereof the said Judge or Judicatory competent are hereby expressly warranted and strictly required and ordained to do the same under the penalty forsaid unless the delay be upon the prisoners petition or desire And the dyet of the tryal being prefixed the Magistrats of the place or Keeper of the prison shall then be oblidge to deliver the prisoner to a sufficient guard to be provided by the Judge, his Majesties Advocat or Procurator fiscal that the prisoner may be sisted before the Judge competent, And his Majesties Advocat or Procurator fiscal shall insist in the lybell and the Judge put the same to a tryal and the same shall be determined by a final sentence within fourty dayes if before the Lords of Justiciary and thirty dayes if before any other Judge And if his Majesties Advocat ar Procurator fiscal do not insist in the tryal at the day appointed and prosecute the same to the conclusion as aforesaid, His Majestie with advice forsaid Statutes and Ordains that the dyet shall then be simpliciter deserted and the prisoner immediately liberat from his imprisonment for that crime or offence And if no process be raised and execute within the time allowed or in case of not insisting at the dyet and bringing the process to a conclusion within the forsaid space it shall be lawfull to the prisoner to apply to the Justice Generall Justice Clerk or any of the Lords of Justiciary or Judge competent respective And upon his application and instructing that the limited time by law for insisting or con-

cluding the process is elapsed and Instruments taken thereupon, the said Justice General Justice Clerk Lords of Justiciary and Judge competent shall be obliged within twenty four hours to issue out Letters or precepts direct to Messengers for chargeing the Magistrats or keepers of the prison where the prisoner is detained for setting him at liberty under the penalty of wrongous imprisonment in case of delay or refusal to grant the said letters or precepts or to set him at liberty after the Charge, without prejudice to the keeper of the prison as to his dues in all cases of liberation as formerly before the makeing of this Act And the prisoner being liberat in manner forsaid it shall not be lawfull to put or detain him in prison for the same Crime under the penalty of wrongous imprisonment in case his former liberation be made known to the Committer before the Warrant be granted or in case he be detained after his former imprisonment is sufficiently instructed to the keeper of the prison who upon production of the former warrant of his liberation from his imprisonment for the same Crime shall be obliged to set the prisoner forthwith at liberty unless there be new criminal letters raised before the Commissioners of Justiciary and duely execute against the said prisoner In which case it is hereby Declared lawfull to imprison him of new tho the said Letters be raised for the same Crime for which he was formerly incarcerat And it shall be lawfull to apprehend and secure him at the time of Executing the saids Letters or at any time thereafter before tryal and to detain him till his tryal or that he be set at liberty in due course of law And his Majesty with advice and consent forsaid Ordains his Majesties Advocat to insist in the said lybell and prosecute the same to a final sentence within forty dayes after the said prisoner is of new incarcerat thereupon unless the delay be upon the application or at the desire of the Prisoner ; Wherein if the Kings Advocat failzie the dyet is to be deserted simpliciter and the prisoner ordained to be set at liberty from the said imprisonment ; And the process not being duely prosecute as aforesaid and the dyet thereupon deserted, His Majestie with advice and consent forsaid Declares the party imprisoned a second time as aforesaid to be for ever free from all question or process for the forsaid crime or offence Provideing allwayes that in case of imprisonment for treason the prisoner shall not have access to apply for prefixing of a dyet for process for forty dayes after his imprisonment which are hereby allowed for preparing of the process After elapseeing of which time the Lords of his Majesties Privy Council or Lords of Justiciary or any one of them are hereby required upon the application of the prisoner to issue furth precepts as in other cases And in case of not insisting or prosecuteing the process as aforesaid the prisoner shall be liberat upon sufficient bail to Compear at any time when called within twelve moneths for his good and peaceable behaviour in the mean time the said bail not exceeding the double of the bail in other crimes Declareing that the liberation provided by this present Act is only to be understood from imprisonments for the causes forsaid and without prejudice of all personal diligence or imprisonments for payment of debts or upon sentence or for any other causes than these above exprest in the same way and manner as was competent before the makeing hereof ; And sicklike it is hereby provided and declared that this present Act is no wayes to be extended to Coalliers or Salters and the same is without prejudice or derogation from former Laws requiring bail to be given by Chiftains Landlords or others in the Highlands ; Reserveing likewayes Committments Imprisonments and the prosecution of thefts robberies and depredations in the borders and highlands according to the former laws and customes any thing in this Act notwithstanding Without preja-

dice also to inferior Magistrats Judges or Justices of the Peace and Constables to take security of persons for their good behaviour and keeping of the peace as they have been in use formerly to do or to imprison in order to tryal for indignities done to the saids inferior Magistrats Judges or Justices of Peace, or to imprison parties disobedient and contumacious to Church censures vagabonds and masterfull beggars or to imprison for ryots bloods and batteries or persons found acting in tumults or for drunkenness sabbath breaking and swearing uncleanness pickeries and thieving For which cases or any of them it shall be lawfull to proceed as formerly, the person imprisoned haveing allwayes his relief by offering baill and demanding a tryall as above. As also provideing that in the case of imminent or actual invasion rebellion or insurrection Commitments may proceed by order of the Privy Council or any five of their number upon suspicion of accession thereto without being lyable to any penalty for the said Commitment the person imprisoned haveing allwayes his relief for tryal or liberation as aforesaid And his Majestie with consent forsaid Statutes and Ordains that the pain of wrongous imprisonment shall be Six thousand pound for a Nobleman four thousand pound for a landed Gentleman two thousand pound for every other Gentleman and Burgess and four hundred pound for other persons; And if any prisoner be detained after elapsing of the respective dayes in manner above prescribed for obtaining his liberty, the Judges Magistrats or others wrongously detaining shall be lyable in the pains following viz. of ane hundred pound for each day for a Nobleman sixty six pound thirteen shilling four pennies for a landed Gentleman, thirty three pound six shilling eight pennies for other Gentlemen and Burgesses Six pound thirteen shilling four pennies for other persons And farder shall loose their offices and be incapable of public trust by and attour the pains above specified and the penalty to belong to the party imprisoned and process to be competent for the same before the Lords of his Majesties Privy Council or before the Lords of Council and Session to be discussed by them summarly without abideing the course of the roll: And it is hereby Declared that the above penalties shall not be modified by any power or authority whatsoever And his Majestie with advice and consent forsaid Extends this Act for preventing of wrongous imprisonment to the case of all confinements not either consented to by the party or inflicted after tryal by sentence And farder Discharges all closs imprisonments beyond the space of Eight dayes from the commitment under the pains of wrongous imprisonment above set down As also that no person be transported furth of this Kingdom except with his own Consent given before a Judge or by legal sentence Certifieing Judges and Magistrats and all others who shall give order otherwayes for the said transportation as likewayes all such who shall transport any person without a lawfull Warrant from a Judge or Magistrat that he shall be lyable to the foresaid pains of wrongous imprisonment as also of being deprived and declared incapable of all public trust And his Majestie with advice and consent forsaid Enacts and Declares that action and process for wrongous imprisonment shall prescribe if not pursued within three years after the last day of the wrongous imprisonment And process being once raised the same shall prescribe if not insisted in yearly thereafter And it is hereby Statute and Ordained by advice and consent forsaid that no member of Parliament attending shall be imprisoned or confined upon any account whatsoever dureing a Session of Parliament without a Warrant of Parliament Reserveing to the high Constable and Marischall their priviledges and jurisdictions in the time of Parliament as formerly; And also provideing that if any member shall happen to commit a

capital crime or if there be a manifest hazard of the peace any Magistrat may atatch for securing of the person or the peace and deliver the person to the custody of the High Constable in order to the Parliaments cognition the next Sederunt.<sup>372</sup>

## 12. *ACT against Profaneness.*

OUR SOVERAIGN LORD for the better and more effectual repressing of profaneness and immorality with advice and consent of the Estates of Parliament Ratifies Renews and Revives all former Laws and Acts of Parliament made against drunkenness sabbath breaking swearing fornication adultery and all manner of uncleanness mocking and reproaching religion and the exercise thereof and generally all other Laws made against profaneness And particularly without prejudice of the said generality Ratifies and Revives the Act of the ninth Parliament, Queen Mary Cap. 74. Intituled Act anent adultery As also the Act of the seventh Parliament James the Sixth, Cap. 105, Intituled The Explanation of the Act touching not-tour and manifest adultery And ordains the same to be put to strict and vigorous Execution in all points; As also Ratifies Approves the Acts following viz. The Act of Parliament 1<sup>m</sup> vj<sup>c</sup> and seventy two entituled Act against Profaneness whereby all members of his Majesties Privy Council or Lords of Session with all Judges ordinary haveing their residence or keeping Courts in any paroch are ordained to Execute or cause Execute the said Laws against such delinquents therein as shall be delated to them by the Kirk sessions or other Church Judicatories with power to the Kirk session and heretors to name a Collector of the fines; As also where none of the foresaid persons in authority reside to nominat a person resident within the paroch whom they shall offer to the Judge ordinary of the bounds to the end he may grant them a deputation to the effect forsaid; As likewayes to modifie and appoint such fees to the said Collectors out of the said fines as they shall find just and that the remainder of the said fines be applyed for the use of the poor in manner specified in the said Act The Act of Parliament 1<sup>m</sup> vj<sup>c</sup> and ninety three also intituled Act against profaneness whereby every Presbitry within this Kingdom is Impowered and Ordained to appoint one or more within their respective bounds to take notice of all vices and immoralities and to delate and prosecute the persons guilty conform to the tenor of former Acts and allowing to them out of the fines not only their whole Expenses but such rewards as the Lords of Privy Council shall think fit The Act 1<sup>m</sup> vj<sup>c</sup> and ninety five likewayes intituled Against Profaneness whereby all the Judges ordinary and their deputes and all Justices of Peace within whose bounds any of the said offences shall happen are authorized and enjoyned to put the said Acts against Profaneness to exact and punctual execution at all times without necessity of any dispensation and against all persons whither officers souldiers or others without exception with Certification that any of the said Judges that shall refuse or neglect to put the said Laws in execution upon the application of any Minister Kirk session or any person in their name informing and offering sufficient probation he shall be lyable and subject toties quocjet to a fine of one hundred pounds Scots for the poor of the paroch where the scandall happened: Declareing that the agent for the Kirk, the Minister or Kirk session of the paroch, or any haveing their warrand shall have good interest to pursue before the Lords of Session any of the saids Judges refusing or neglecting as

<sup>372</sup> This is one of the most important acts relating to the liberty of the subject in Scotland. For a commentary on it, see Hume, vol. ii. p. 84, *et seq.*

said is And that the said refusal or neglect shall be sufficiently proven by an Instrument under a notars hand and witnesses subscribing and deponing that the said information was given and probation offered as the said Act more fully bears And lastly the Act I<sup>m</sup> vjc and ninety six also intituled Act against Profaneness in the hail heads articles and clauses thereof All which Laws and Acts of Parliament generally and particularly above narrated His Majestie with advice and consent forsaide Ordains to be put to strict and punctual Execution in all points; And farder all Ministers and Kirk sessions and heretors concerned are hereby required and ordained to do and Act their parts faithfully in the premisses as they will be answerable And in case any person shall be Excommunicat for not answering or for not obeying and satisfieing the Church when processed before them for profaneness and immorality or in case that any person cited on the account forsaide shall be declared by the Church to be contumacious Then and in either of these cases His Majestie with advice and consent forsaide Statutes and Ordains that upon application made by a Presbitery, provincial Synod, or General Assembly to His Majesties Privy Council representing the same the Lords of Priyy Council shall represent the said matter to his Majestie that he may be duely informed anent the forsaide person found guilty or contumacious as said is as a person not fit to be employed or continued in any place of public trust civil or military.<sup>373</sup>

<sup>373</sup> In reference to this act, see Hume, vol. i. p. 572, and Jobson & Hay v. Lambert, 29th November 1828, 7 S. & D. p. 83.



ACTA PARLIAMENTORUM  
ANNÆ REGINÆ.

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APUD EDINBURGH,  
VI DIE MAII A.D. M.DCC.III.

4. *ACT anent Leasing Makers and Slanderers.*

OUR SOVEREIGN LADY Considering that by the Acts of Parliament following viz. The Act James first Parliament second Cap: fourty third, intituled, Leasing makers tines life and goods Act James fifth, Parliament Sixth Cap: Eighty third, Of Leasing makers, Act James Sixth Parliament Eight Cap: one hundred and thirty fourth Anent Slanderers of the King his Progenitors and Realm Act James Sixth Parliament tenth Cap: tenth, Intituled Authors of Slanderous Speeches or Writs should be punished to the death, Act James Sixth Parliament fourteenth Cap: two hundred and fifth, Anent Leasing makers and authors of slanders And Act James Sixth Parliament twentieth Cap: ninth intituled Act against Scandalous Speeches and Lybells, the Crimes therein mentioned are made capital and punishable by death and confiscation And that the said Laws have been lyable to streatches, And that in respect of their generality and the various construction which the same may admit They may be as to the foresaid capital punishment of dangerous consequence Doth therefore with advice and consent of the Estates of Parliament Abrogate and Discharge in all time comeing the foresaid sanction and pain of death and confiscation contained in the said Acts And Statutes and Ordains that the punishment of the Crimes therein mentioned shall for hereafter only be arbitrary according to the demerit of the transgression That is by fineing imprisonment or banishment, or if the party offender be poor and not able to pay a fine, then to be punished in his body (life and limb alwayes preserved).<sup>374</sup>

8. *ACT Dischargeing Butchers to be Grasiers &c.*

OUR SOVEREIGN LADY with advice and consent of the Estates of Parliament Do hereby Prohibite and Discharge all Butchers or Fleshers to take brook or possess either by themselves or any others for their use and behoove directly or indirectly any parks inclosures or any other Lands whatsoever less or more exceeding one acre under the penalty of ane hundred pounds Scots for each time they contraveen and also to forfeit the whole nolt and sheep that shall be found in the said parks inclosures and graseings belonging to them the one half thereof to be

<sup>374</sup> The punishment of leasing making is farther modified by 6th Geo. IV. ch. 47, and 7th Will. IV. ch. 5.



employed for her Majesties use and the other half to the informer And farder Do hereby Declare the Contraveener to lose his freedom as a Burgess in all the Burghs of this Kingdom And likeways Declares all Tacks already made or to be made with any Butcher or Flesher or for their behove anent the sett or farm of all parks inclosures and other Lands whatsoever exceeding an acre to each butcher or flesher (unless the same be tilled and sowed with corn yearly) to terminat and be void and null after the term of Whitsunday next to come And farder Her Majestie with advice and consent foresaid Statutes and Ordains that it shall be leisum to all persons whatsoever to sell and break all sorts of fleshes on every lawful day of the week and that in all the Burghs and Touns of this Kingdom free of any imposition whatsoever the petty custome of Burgh excepted.<sup>375</sup>

### APUD EDINBURGH,

III DIE OCTOBRIS, A.D. M,DCC,VI.

JANUARY XVI. M,DCC,VII.

#### 6. *ACT for Securing the Protestant Religion and Presbyterian Church Government.*

OUR SOVEREIGN LADY and the Estates of Parliament considering that by the late Act of Parliament for a Treaty with England for an Union of both Kingdoms It is provided that the Commissioners for that Treaty should not treat of or concerning any alteration of the Worship Discipline and Government of the Church of this Kingdom, as now by Law established, Which Treaty being now reported to the Parliament, and it being reasonable and necessary that the true Protestant Religion, as presently professed within this Kingdom with the Worship Discipline and Government of this Church should be effectually and unalterably secured, Therefore Her Majesty with advice and consent of the said Estates of Parliament Doth hereby Establish and Confirm the said true Protestant Religion and the Worship Discipline and Government of this Church to continue without any alteration to the people of this land in all succeeding generations And more especially Her Majestie with advice and consent foresaid Ratifies Approves and for ever Confirms the fifth Act of the first Parliament of King William and Queen Mary Entituled Act Ratifieing the Confession of Faith & settling Presbyterian Church Government, with the hail other Acts of Parliament relating thereto in prosecution of the Declaration of the Estates of this Kingom, containing the Claim of Right, bearing date the eleventh of April, 1<sup>st</sup> vj<sup>th</sup> and eighty nine And Her Majesty with advice and consent foresaid expressly Provides and Declares that the foresaid true Protestant Religion contained in the above mentioned Confession of Faith with the form and purity of worship presently in use within this Church, and it's Presbyterian Church Government and Discipline, that is to say the Govern-

<sup>375</sup> That act is in desuetude with the exception of the last enactment contained in it. See *Magistrates of Edinburgh v. Fleshers*, No. 6 of Appendix to *Burgh Royal*, *MORR. DICT.* *Fleshers of Canongate v. Wight and Others*, 11th December 1835, 14 S. & D. p. 135. In reference to the last enactment, see *Fleshers of Aberdeen v. Williamson and Others*, 1st June 1822, 1 S. & D., and *Dick v. Fleshers of Stirling*, 1st February 1827, 3 S. & D.

ment of the Church by Kirk Sessions Presbyteries Provincial Synods and General Assemblies, all established by the foresaid Acts of Parliament pursuant to the Claim of Right, shall remain and continue unalterable, And that the said Presbyterian Government shall be the only Government of the Church within the Kingdom of Scotland And further for the greater security of the foresaid Protestant Religion and of the Worship Discipline and Government of this Church as above established Her Majesty with advice and consent foresaid Statutes and Ordains That the Universities and Colledges of Saint Andrews Glasgow Aberdeen and Edinburgh as now established by Law shall Continue within this Kingdom for ever. And that in all time comeing no Professors, Principals, Regents, Masters, or others bearing office in any University Colledge or School within this Kingdom be capable or be admitted or allowed to continue in the exercise of their said functions but such as shall own and acknowledge the Civil Government in manner prescribed or to be prescribed by the Acts of Parliament As also that before or at their admissions they do and shall acknowledge and profess and shall subscribe to the foresaid Confession of Faith as the confession of their faith, and that they will practise and conform themselves to the worship presently in use in this Church, and submit themselves to the Government and Discipline thereof and never endeavour directly or indirectly the prejudice or subversion of the same and that before the respective Presbyteries of their bounds by whatsoever gift presentation or provision they may be thereto provided And further Her Majesty with advice foresaid expressly Declares and statutes That none of the Subjects of this Kingdom shall be lyable to, but all and every one of them for ever free of any Oath Test or Subscription within this Kingdom contrary to or inconsistent with the foresaid true Protestant Religion and Presbyterian Church Government Worship and Discipline as above established And that the same within the bounds of this Church and Kingdom shall never be imposed upon or required of them in any sort And Lastly That after the decease of her present Majesty (whom God long preserve) the Sovereign succeeding to her in the Royal Government of the Kingdom of Great Britain shall in all time comeing at his or her accession to the Crown Swear and Subscribe that they shall inviolably maintain and preserve the foresaid Settlement of the true Protestant Religion with the Government Worship Discipline Right and Priviledges of this Church as above established by the Laws of this Kingdom in prosecution of the Claim of Right. And it is hereby Statute and Ordained That this Act of Parliament with the Establishment therein contained shall be held and observed in all time comeing as a fundamental and essential condition of any Treaty or Union to be concluded betwixt the two Kingdoms without any alteration thereof or derogation thereto in any sort for ever As also that this Act of Parliament and settlement therein contained shall be insert and repeated in any Act of Parliament that shall pass for agreeing and concluding the foresaid Treaty or Union betwixt the two Kingdoms And that the same shall be therein expressly Declared to be a fundamental and essential Condition of the said Treaty or Union in all time comeing.<sup>376</sup>

*7. ACT Ratifying and Approving the Treaty of Union of the Two Kingdoms of SCOTLAND and ENGLAND.*

THE Estates of Parliament Considering that Articles of Union of the King-

<sup>376</sup> This act is incorporated with the Treaty of Union as an essential condition thereof.

doms of Scotland and England were agreed on the twenty second of July One thousand seven hundred and six years by the Commissioners nominated on behalf of this Kingdom, under Her Majesties Great Seal of Scotland bearing date the twenty seventh of February last past in pursuance of the fourth Act of the third Session of this Parliament and the Commissioners nominated on behalf of the Kingdom of England under Her Majesties Great Seal of England bearing date at Westminster the tenth day of April last past in pursuance of an Act of Parliament made in England the third year of Her Majesties Reign to treat of and concerning an Union of the said Kingdoms Which Articles were in all humility presented to Her Majesty upon the twenty third of the said Month of July and were Recommended to this Parliament by Her Majesties Royal Letter of the date the thirty one day of July One thousand seven hundred and six And that the said Estates of Parliament have agreed to and approved of the saids Articles of Union with some Additions and Explanations as is contained in the Articles hereafter insert And sicklyke Her Majesty with advice and consent of the Estates of Parliament Resolving to Establish the Protestant Religion and Presbyterian Church Government within this Kingdom has past in this Session of Parliament an Act entituled Act for secureing of the Protestant Religion and Presbyterian Church Government which by the Tenor thereof is appointed to be insert in any Act ratifying the Treaty and expressly declared to be a fundamentall and essentiall Condition of the said Treaty or Union in all time coming Therefore Her Majesty with advice and consent of the Estates of Parliament in fortification of the Approbation of the Articles as above mentioned And for their further and better Establishment of the same upon full and mature deliberation upon the forsaid Articles of Union and Act of Parliament Doth Ratifie Approve and Confirm the same with the Additions and Explanations contained in the saids Articles in manner and under the provision aftermentioned whereof the Tenor follows.

I. THAT the Two Kingdoms of Scotland and England, shall upon the first day of May next ensuing, the date hereof, and forever after, be United into One Kingdom by the Name of GREAT BRITAIN: And that the Ensigns Armorial of the said United Kingdom be such as her Majesty shall appoint and the Crosses of St Andrew and St George be conjoined in such manner as Her Majesty shall think fit, and used in all Flags, Banners, Standards and Ensigns both at Sea and Land.

II. THAT the Succession to the Monarchy of the United Kingdom of Great Britain and of the Dominions thereunto belonging after Her Most Sacred Majesty, and in default of Issue of Her Majesty be, remain and continue to the Most Excellent Princess Sophia Electoress and Dutchess Dowager of Hanover, and the Heirs of Her body, being Protestants, upon whom the Crown of England is settled by an Act of Parliament made in England in the twelfth year of the Reign of His late Majesty King William the Third entituled An Act for the further Limitation of the Crown and better securing the Rights and Liberties of the Subject: And that all Papists and persons marrying Papists, shall be excluded from and for ever incapable to inherit possess or enjoy the Imperial Crown of Great Britain and the Dominions thereunto belonging or any part thereof; And in every such case the Crown and Government shall from time to time descend to, and be enjoyed by such person being a Protestant as should have inherited and enjoyed the same, in

case such Papists or person marrying a Papist was naturally dead, according to the provision for the Descent of the Crown of England, made by another Act of Parliament in England in the first year of the Reign of their late Majesties King William and Queen Mary entituled An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown.

III. THAT the United Kingdom of Great Britain be Represented by one and the same Parliament to be stiled the Parliament of Great Britain.

IV. THAT all the Subjects of the United Kingdom of Great Britain shall from and after the Union have full Freedom and Intercourse of Trade and Navigation to and from any port or place within the said United Kingdom and the Dominions and Plantations thereunto belonging. And that there be a Communication of all other Rights, Privileges and Advantages which do or may belong to the Subjects of either Kingdom except where it is otherwayes expressly agreed in these Articles.

V. THAT all ships or vessels belonging to Her Majesties Subjects of Scotland at the time of Ratifying the Treaty of Union of the Two Kingdoms in the Parliament of Scotland though forreign built be deemed and pass as ships of the build of Great Britain; the Owner or where there are more Owners, one or more of the Owners within Twelve Months after the first of May next making oath that at the time of Ratifying the Treaty of Union in the Parliament of Scotland, the same did in hail or in part belong to him or them, or to some other Subject or Subjects of Scotland, to be particularly named with the place of their respective abodes, and that the same doth then at the time of the said Deposition wholly belong to him or them, and that no forreigner directly or indirectly hath any share part or interest therein, Which Oath shall be made before the chief Officer or Officers of the Customs in the Port next to the abode of the said Owner or Owners; And the said Officer or Officers shall be Impowered to administer the said Oath, And the Oath being so administered shall be attested by the Officer or Officers who administered the same And being Registred by the said Officer or Officers, shall be delivered to the Master of the ship for security of her Navigation and a Duplicate thereof shall be transmitted by the said Officer or Officers to the chief Officer or Officers of the Customs in the port of Edinburgh, to be there Entered in a Register and from thence to be sent to the port of London to be there Entered in the General Register of all Trading ships belonging to Great Britain.

VI. THAT all parts of the United Kingdom for ever from and after the Union shall have the same Allowances Encouragements and Drawbacks, and be under the same Prohibitions Restrictions and Regulations of Trade and lyable to the same Customs and Duties on Import and Export And that the Allowances Encouragements and Drawbacks Prohibitions Restrictions and Regulations of Trade and the Customs and Duties on Import and Export settled in England when the Union commences shall from and after the Union take place throughout the whole United Kingdom, excepting and reserving the Duties upon Export and Import of such particular Commodities from which any persons the Subjects of either Kingdom are specially Liberated and Exempted by their private Rights which after the Union are to remain safe and entire to them in all respects as before the same And that from and after the Union no Scots Cattle carried into England shall be lyable to any other Duties either on the publick or private Accounts than these Duties to which the Cattle of England are or shall be lyable within the said

Kingdom, And seeing by the Laws of England there are Rewards granted upon the Exportation of certain kinds of Grain wherein Oats grinded or ungrinded are not expressed, that from and after the Union when Oats shall be sold at fifteen shillings Sterling per quarter or under there shall be payed two shillings and six pence Sterling for every quarter of the Oat-meal exported in the terms of the Law whereby and so long as Rewards are granted for Exportation of other Grains And that the Bear of Scotland have the same Rewards as Barley. And in respect the Importation of Victual into Scotland from any place beyond Sea would prove a Discouragement to Tillage, Therefore that the Prohibition as now in force by the Law of Scotland against Importation of Victual from Ireland or any other place beyond Sea into Scotland, do after the Union remain in the same force as now it is until more proper and effectually ways be provided by the Parliament of Great Britain for discouraging the Importation of the said Victual from beyond Sea.

VII. THAT all parts of the United Kingdom be for ever from and after the Union lyable to the same Excises upon all Exciseable Liquors excepting only that the thirty four Gallons English Barrel of Beer or Ale amounting to twelve Gallons Scots present measure sold in Scotland by the Brewer at nine shillings six pence Sterling excluding all Duties and Retailed including Duties and the Retailers profit at two pence the Scots pint or eight part of the Scots Gallon, be not after the Union lyable on account of the present Excise upon Exciseable Liquors in England, to any higher Imposition than two shillings Sterling upon the forsaied thirty four Gallons English barrel, being twelve gallons the present Scots measure And that the Excise settled in England on all other Liquors when the Union commences take place throughout the whole United Kingdom.

VIII. THAT from and after the Union all forreign Salt which shall be Imported into Scotland shall be charged at the Importation there with the same Duties as the like Salt is now charged with being Imported into England and to be levied and secured in the same manner. But in regard the Duties of great quantities of forreign Salt Imported may be very heavie on the Merchants Importers; That therefor all forreign Salt imported into Scotland shall be Cellared and Locked up under the custody of the Merchant Importer and the Officers employed for levying the Duties upon Salt And that the Merchant may have what quantities thereof his occasion may require not under a Weigh or fortie Bushells at a time; Giving security for the duty of what quantity he receives payable in six Months. But Scotland shall for the space of seven Years from the said Union be Exempted from paying in Scotland for Salt made there the Dutie or Excise now payable for Salt made in England: But from the Expiration of the said seven years shall be subject and lyable to the same Duties for Salt made in Scotland, as shall be then payable for Salt made in England, to be levied and secured in the same manner and with proportional Drawbacks and Allowances as in England, with this exception that Scotland shall after the said seven years remain exempted from the Duty of two shillings and four pence a Bushell on home Salt Imposed by ane Act made in England in the Ninth and Tenth of King William the Third of England And if the Parliament of Great Britain shall at or before the expiring of the said seven years substitute any other fund in place of the said two shillings and four pence of Excise on the bushel of Home Salt, Scotland shall after the said seven years, bear a proportion of the said Fund, and have an Equivalent in the Terms of this Treaty, And that during the said seven years there shall be payed in England for all Salt

made in Scotland and imported from thence into England the same duties upon the Importation as shall be payable for Salt made in England to be levied and secured in the same manner as the Duties on foreign Salt are to be levied and secured in England. And that after the said seven years how long the said Duty of two shillings four pence a Bushel upon Salt is continued in England the said two shillings four pence a Bushel shall be payable for all Salt made in Scotland and imported into England, to be levied and secured in the same manner And that during the continuance of the Duty of two shillings four pence a Bushel upon Salt made in England no Salt whatsoever be brought from Scotland to England by Land in any manner under the penalty of forfeiting the Salt and the Cattle and Carriages made use of in bringing the same and paying twenty shillings for every Bushel of such Salt, and proportionably for a greater or lesser quantity, for which the Carrier as well as the Owner shall be lyable jointly and severally, And the persons bringing or carrying the same, to be imprisoned by any one Justice of the Peace, by the space of six months without Bail, and until the penalty be payed : And for Establishing an equality in Trade That all Fleashes exported from Scotland to England and put on Board in Scotland to be Exported to parts beyond the Seas and provisions for ships in Scotland and for foreign voyages may be salted with Scots Salt paying the same Dutie for what Salt is so employed as the like quantity of such Salt pays in England and under the same penalties forfeitures and provisions for preventing of frauds as are mentioned in the Laws of England And that from and after the Union the Laws and Acts of Parliament in Scotland for Pineing Curing and Packing of Herrings White Fish and Salmond for Exportation with Foreign Salt only without any mixture of British or Irish Salt and for preventing of frauds in Curing and Packing of Fish be continued in force in Scotland subject to such alterations as shall be made by the Parliament of Great Britain And that all Fish exported from Scotland to parts beyond the Seas which shall be Cured with Foreign Salt only and without mixture of British or Irish Salt, shall have the same Eases Præmiums and Drawbacks as are or shall be allowed to such persons as Export the like Fish from England : And that for Encouragement of the Herring Fishing there shall be allowed and payed to the Subjects Inhabitants of Great Britain during the present allowances for other Fishes ten shillings five pence Sterling for every Barrel of White Herrings which shall be exported from Scotland ; And that there shall be allowed five shillings Sterling for every Barrel of Beef or Pork salted with Foreign Salt without mixture of British or Irish Salt and Exported for sale from Scotland to parts beyond Sea alterable by the Parliament of Great Britain. And if any matters of fraud relating to the said Duties on Salt shall hereafter appear which are not sufficiently provided against by this Article the same shall be subject to such further provisions as shall be thought fit by the Parliament of Great Britain.

IX. THAT whenever the sum of One million, nine hundred ninety seven thousand, seven hundred and sixty three pounds, eight shillings and four pence half penny shall be Enacted by the Parliament of Great Britain to be raised in that part of the United Kingdom now called England, on Land and other things usually charged in Acts of Parliament there for granting an aid to the Crown by a Land Tax ; that part of the United Kingdom now called Scotland shall be charged by the same Act with a further sum of fourty eight thousand pounds free of all Charges, as the Quota of Scotland to such Tax, and so proportionably for any greater or lesser sum raised in England by any Tax on Land and other things usually charged, together with the Land, And that such Quota for Scotland in the cases aforesaid, be raised and collected in the same manner as the Cess now is

in Scotland, but subject to such Regulations in the manner of Collecting, as shall be made by the Parliament of Great Britain.

X. THAT during the continuance of the respective Duties on Stamp paper, Vellum and Parchment, by the severall Acts now in force in England, Scotland shall not be charged with the same respective Duties.

XI. THAT during the continuance of the Duties payable in England on Windows and Lights which determines on the first day of August One thousand seven hundred and ten Scotland shall not be charged with the same Duties.

XII. THAT during the continuance of the Duties payable in England on Coals, Culm and Cinders, which determines the thirtieth day of September One thousand seven hundred and ten Scotland shall not be charged therewith for Coals Culm and Cinders consumed there but shall be charged with the same Duties as in England for all Coals, Culm and Cinders not consumed in Scotland.

XIII. THAT during the continuance of the Duty payable in England on Malt, which determines the twenty fourth day of June One thousand seven hundred and seven, Scotland shall not be charged with that Duty.

XIV. THAT the Kingdom of Scotland be not Charged with any other Duties laid on by the Parliament of England before the Union except these consented to in this Treaty, in regard it is agreed, That all necessary Provision shall be made by the Parliament of Scotland for the publick Charge and Service of that Kingdom for the year One thousand seven hundred and seven: Provided nevertheless That if the Parliament of England shall think fit to lay any further Impositions by way of Customs, or such Excises, with which by virtue of this Treaty, Scotland is to be charged equally with England, in such case Scotland shall be lyable to the same Customs and Excises, and have an Equivalent to be settled by the Parliament of Great Britain; With this further provision That any Malt to be made and consumed in that part of the United Kingdom now called Scotland shall not be charged with any Imposition upon Malt during this present War And seeing it cannot be supposed that the Parliament of Great Britain will ever lay any sorts of Burthens upon the United Kingdom, but what they shall find of necessity at that time for the Preservation and Good of the whole, and with due regard to the Circumstances and Abilities of every part of the United Kingdom Therefore it is agreed that there be no further Exemption insisted upon for any part of the United Kingdom, but that the consideration of any Exemptions beyond what are already agreed on in this Treaty, shall be left to the determination of the Parliament of Great Britain,

XV. WHEREAS by the Terms of this Treaty the Subjects of Scotland for preserving an Equality of Trade throughout the United Kingdom, will be lyable to severall Customs and Excises now payable in England, which will be applicable towards payment of the Debts of England, contracted before the Union; It is agreed, That Scotland shall have an Equivalent for what the Subjects thereof shall be so charged towards payment of the said Debts of England, in all particulars whatsoever, in manner following viz. That before the Union of the said Kingdoms, the sum of three hundred and ninety eight thousand and eighty five pounds ten shillings be granted to Her Majesty by the Parliament of England for the uses aftermentioned, being the Equivalent to be answered to Scotland for such parts of

the saids Customs and Excises upon all Exciseable Liquors, with which that Kingdom is to be charged upon the Union, as will be applicable to the payment of the said Debts of England, according to the proportions which the present Customs in Scotland, being thirty thousand pounds per annum, do bear to the Customs in England, computed at One million three hundred forty one thousand five hundred and fifty nine pounds per annum : And which the present Excises on Exciseable Liquors in Scotland, being thirty three thousand and five hundred pounds per annum, do bear to the Excises on Exciseable Liquors in England, computed at nine hundred forty seven thousand six hundred and two pounds per annum ; Which sum of three hundred ninety eight thousand eighty-five pounds ten shillings, shall be due and payable from the time of the Union : And in regard That after the Union Scotland becoming lyable to the same Customs and Duties payable on Import and Export, and to the same Excises on all Exciseable Liquors as in England as well upon that account as upon the account of the Increase of Trade and People (which will be the happy consequence of the Union) the said Revenues will much improve beyond the before mentioned annual values thereof, of which no present Estimate can be made, Yet nevertheless for the reasons aforesaid there ought to be a proportionable Equivalent answered to Scotland It is agreed That after the Union there shall be an Accompt kept of the said Duties arising in Scotland, to the end it may appear, what ought to be answered to Scotland, as an Equivalent for such proportion of the said encrease as shall be applicable to the payment of the Debts of England. And for the further and more effectually answering the severall ends hereafter mentioned It is agreed that from and after the Union, the whole Encrease of the Revenues of Customs, and Duties on Import and Export, and Excise upon Exciseable Liquors in Scotland over and above the annual produce of the said respective Duties, as above stated, shall go and be applied, for the term of seven years, to the uses hereafter mentioned ; And that upon the said account, there shall be answered to Scotland annually from the end of seven years after the Union, an Equivalent in proportion to such part of the said Increase as shall be applicable to the Debts of England, And generally that an Equivalent shall be answered to Scotland for such parts of the English Debts as Scotland may hereafter become lyable to pay by reason of the Union, other than such for which appropriations have been made by Parliament in England of the Customs, or other duties on Export and Import Excises on all Exciseable Liquors, in respect of which Debts, Equivalents are herein before provided. And as for the uses to which the said sum of Three hundred ninety eight thousand eighty five pounds ten shillings to be granted as aforesaid and all other monies, which are to be answered or allowed to Scotland as said is are to be applied It is agreed That in the first place out of the foresaid sum what consideration shall be found necessary to be had for any Losses which privat persons may sustain by reducing the Coin of Scotland to the Standard and Value of the Coin of England may be made good In the next place That the Capital Stock or fund of the African and Indian Company of Scotland advanced together with the Interest for the said Capital Stock after the rate of Five per Cent. per annum from the respective times of the payment thereof shall be payed ; Upon payment of which Capital Stock and Interest It is agreed The said Company be dissolved and cease And also that from the time of passing the Act of Parliament in England for raising the said sum of three hundred ninety eight thousand eighty five pound ten shillings the said Company shall neither Trade nor Grant Licence to Trade Providing that if the said Stock and Interest shall not be payed in twelve months after the Commencement of the Union That then the said Company may from thence forward Trade or give Licence to Trade until the said hail Capitall Stock and Interest



shall be payed : And as to the Overplus of the said sum of three hundred ninety eight thousand eighty five pound ten shillings after payment of what consideration shall be had for losses in repairing the Coin and paying the said Capital Stock and Interest, and also the hail increase of the said Revenues of Customs Duties and Excises above the present value which shall arise in Scotland during the said term of seven years together with the Equivalent which shall become due upon the Improvement thereof in Scotland after the said term and also as to all other sums which according to the agreements aforesaid may become payable to Scotland by way of Equivalent for what that Kingdom shall hereafter become lyable towards payment of the Debt of England It is agreed That the samen be applied in manner following, viz. That all the publick Debts of the Kingdom of Scotland as shall be adjusted by this present Parliament shall be payed and that two thousand pounds per annum for the space of seven years shall be applied towards Encouraging and Promoting the Manufacture of coarse Wool within these shires which produce the Wool And that the first two thousand pounds Sterling be payed at Martinmass next, and so yearly at Martinmass during the space foresaid and afterwards the same shall be wholly applied towards the Encouraging and Promoting the Fisheries and such other Manufactures and Improvements in Scotland as may most conduce to the general Good of the United Kingdom. And it is agreed, That Her Majesty be Impowered to appoint Commissioners, who shall be accountable to the Parliament of Great Britain, for disposing the said sum of three hundred ninety eight thousand eighty five pounds ten shilling, and all other monies which shall arise to Scotland, upon the agreements aforesaid to the purposes before mentioned ; Which Commissioners shall be Impowered to call for, Receive and Dispose of the said monies in manner aforesaid, and to Inspect the books of the severall Collectors of the said Revenues, and of all other duties from whence an Equivalent may arise ; and that the Collectors and Managers of the said Revenues and Duties be obliged to give to the said Commissioners subscribed authentick Abbreviats of the Produce of such Revenues and Duties arising in their respective Districts, and that the said Commissioners shall have their office within the Limits of Scotland, and shall in such Office keep Books containing Accompts of the Amount of the Equivalents, and how the same shall have been disposed of from time to time, which may be inspected by any of the Subjects who shall desire the samen.

XVI. THAT from and after the Union the Coin shall be of the same standard and value, throughout the United Kingdom, as now in England, And a Mint shall be continued in Scotland under the same Rules as the Mint in England And the present Officers of the Mint continued subject to such Regulations and Alterations as Her Majesty, Her Heirs or Successors, or the Parliament of Great Britain shall think fit.

XVII. THAT from and after the Union the same Weights and Measures shall be used throughout the United Kingdom, as are now Established in England ; And Standards of Weights and Measures shall be kept by those Burroughs in Scotland, to whom the keeping the Standards of Weights and Measures now in use there does of special Right belong ; All which Standards shall be sent down to such respective Burroughs from the Standards kept in the Exchequer at Westminster, subject nevertheless to such regulations as the Parliament of Great Britain shall think fit.

XVIII. THAT the Laws concerning Regulation of Trade, Customs, and such Excises, to which Scotland is by virtue of this Treaty to be lyable, be the same

in Scotland, from and after the Union as in England; and that all other Laws, in use within the Kingdom of Scotland do after the Union, and notwithstanding thereof, remain in the same force as before (except such as are contrary to or inconsistent with this Treaty) but alterable by the Parliament of Great Britain, With this difference betwixt the Laws concerning publick Right, Policy, and Civil Government, and those which concern private Right; That the Laws which concern publick Right Policy and Civil Government may be made the same throughout the whole United Kingdom; but that no alteration be made in Laws which concern private Right, except for evident utility of the subjects within Scotland.

XIX. THAT the Court of Session or Colledge of Justice, do after the Union and notwithstanding thereof, remain in all time coming within Scotland as it is now constituted by the Laws of that Kingdom, and with the same Authority and Priviledges as before the Union; subject nevertheless to such Regulations for the better Administration of Justice as shall be made by the Parliament of Great Britain; And that hereafter none shall be named by Her Majesty or Her Royal Successors to be Ordinary Lords of Session but such who have served in the Colledge of Justice as Advocats or Principal Clerks of Session for the space of five years, or as Writers to the Signet for the space of ten years With this provision That no Writer to the Signet be capable to be admitted a Lord of the Session unless he undergo a private and publick Tryal on the Civil Law before the Faculty of Advocats and be found by them qualified for the said Office two years before he be named to be a Lord of the Session, yet so as the Qualifications made or to be made for capacitating persons to be named Ordinary Lords of Session may be altered by the Parliament of Great Britain. And that the Court of Justiciary do also after the Union, and notwithstanding thereof remain in all time coming within Scotland, as it is now constituted by the Laws of that Kingdom, and with the same Authority and Priviledges as before the Union; subject nevertheless to such Regulations as shall be made by the Parliament of Great Britain, and without prejudice of other Rights of Justiciary: And that all Admiralty Jurisdictions be under the Lord High Admirall or Commissioners for the Admiralty of Great Britain for the time being; And that the Court of Admiralty now Established in Scotland be continued, And that all Reviews, Reductions or Suspensions of the Sentences in Maritime Cases competent to the Jurisdiction of that Court remain in the same manner after the Union as now in Scotland, until the Parliament of Great Britain shall make such Regulations and Alterations, as shall be judged expedient for the whole United Kingdom, so as there be alwayes continued in Scotland a Court of Admiralty such as in England, for determination of all Maritime Cases relating to private Rights in Scotland competent to the Jurisdiction of the Admiralty Court; subject nevertheless to such Regulations and Alterations as shall be thought proper to be made by the Parliament of Great Britain; And that the Heritable Rights of Admiralty and Vice-Admiralties in Scotland be reserved to the respective Proprietors as Rights of Property, subject nevertheless, as to the manner of Exercising such Heritable Rights to such Regulations and Alterations as shall be thought proper to be made by the Parliament of Great Britain; And that all other Courts now in being within the Kingdom of Scotland do remain, but subject to Alterations by the Parliament of Great Britain; And that all Inferior Courts within the said Limits do remain subordinate, as they are now to the Supream Courts of Justice within the same in all time coming; And that no Causes in Scotland be cognoscible by the Courts of Chancery, Queens-Bench, Common-Pleas, or any other Court in Westminster-hall; And that the said Courts, or any other of the like nature after the Union, shall have no power to

Cognosce, Review or Alter the Acts or Sentences of the Judicatures within Scotland, or stop the Execution of the same ; And that there be a Court of Exchequer in Scotland after the Union, for deciding Questions concerning the Revenues of Customs and Excises there, having the same power and authority in such cases, as the Court of Exchequer has in England And that the said Court of Exchequer in Scotland have power of passing Signatures, Gifts Tutories, and in other things as the Court of Exchequer at present in Scotland hath ; And that the Court of Exchequer that now is in Scotland do remain, until a New Court of Exchequer be settled by the Parliament of Great Britain in Scotland after the Union ; And that after the Union the Queens Majesty and Her Royal Successors, may Continue a Privy Council in Scotland, for preserving of public Peace and Order, until the Parliament of Great Britain shall think fit to alter it or establish any other effectual method for that end.

XX. THAT all heritable Offices, Superiorities, heritable Jurisdictions, Offices for life, and Jurisdictions for life, be reserved to the Owners thereof, as Rights of Property, in the same manner as they are now enjoyed by the Laws of Scotland, notwithstanding of this Treaty.

XXI. THAT the Rights and Priviledges of the Royall Burroughs in Scotland as they now are, Do Remain entire after the Union, and notwithstanding thereof.

XXII. THAT by virtue of this Treaty, Of the Peers of Scotland at the time of the Union Sixteen shall be the number to Sit and Vote in the House of Lords, and Forty Five the number of the Representatives of Scotland in the House of Commons of the Parliament of Great Britain ; And that when Her Majesty Her Heirs or Successors, shall Declare Her or their pleasure for holding the first or any subsequent Parliament of Great Britain until the Parliament of Great Britain shall make further provision therein, A Writ do issue under the Great Seal of the United Kingdom, Directed to the Privy Council of Scotland, Commanding them to Cause Sixteen Peers, who are to sit in the House of Lords to be Summoned to Parliament and forty five Members to be Elected to sit in the House of Commons of the Parliament of Great Britain according to the Agreement in this Treaty, in such manner as by a subsequent Act of this present Session of the Parliament of Scotland shall be settled ; Which Act is hereby Declared to be as valid as if it were a part of and ingrossed in this Treaty : And that the Names of the Persons so Summoned and Elected, shall be Returned by the Privy Council of Scotland into the Court from whence the said Writ did issue. And that if her Majesty, on or before the first day of May next, on which day the Union is to take place shall Declare under the Great Seal of England, That it is expedient, that the Lords of Parliament of England, and Commons of the present Parliament of England should be the Members of the respective Houses of the first Parliament of Great Britain for and on the part of England, then the said Lords of Parliament of England, and Commons of the present Parliament of England, shall be the members of the respective Houses of the first Parliament of Great Britain, for and on the part of England : And Her Majesty may by Her Royal Proclamation under the Great Seal of Great Britain, appoint the said first Parliament of Great Britain to Meet at such time and place as Her Majesty shall think fit ; which time shall not be less than fifty days after the date of such Proclamation ; And the time and place of the Meeting of such Parliament being so appointed, a Writ shall be immediately issued under the Great Seal of Great Britain, directed to the Privy Council of Scotland, for the summoning the Sixteen Peers, and for Electing forty five Mem-

bers, by whom Scotland is to be Represented in the Parliament of Great Britain : And the Lords of Parliament of England, and the Sixteen Peers of Scotland, such Sixteen Peers being Summoned and Returned in the manner agreed in this Treaty; and the Members of the House of Commons of the said Parliament of England and the forty five Members for Scotland, such forty five Members being Elected and Returned in the manner agreed in this Treaty shall assemble and meet respectively in their respective houses of the Parliament of Great Britain, at such time and place as shall be so appointed by Her Majesty, and shall be the Two houses of the first Parliament of Great Britain, And that Parliament may Continue, if the Union of the Two Kingdoms had not been made, unless sooner Dissolved by Her Majesty ; And that every one of the Lords of Parliament of Great Britain, and every member of the House of Commons of the Parliament of Great Britain in the first and all succeeding Parliaments of Great Britain until the Parliament of Great Britain shall otherways Direct, shall take the respective Oaths, appointed to be taken in stead of the Oaths of Allegiance and Supremacy, by an Act of Parliament made in England in the first year of the Reign of the late King William and Queen Mary entituled An Act for the abrogating of the Oaths of Supremacy and Allegiance, and appointing other Oaths, and Make Subscribe and audibly Repeat the Declaration mentioned in an Act of Parliament made in England in the thirtieth year of the Reign of King Charles the Second entituled An Act for the more effectual preserving the Kings Person and Government by Disabling Papists from sitting in either House of Parliament, and shall take and subscribe the Oath mentioned in an Act of Parliament made in England, in the first year of Her Majesties Reign entituled An Act to Declare the Alterations in the Oath appointed to be taken by the Act Entituled An Act for the further security of His Majesties Person, and the Succession of the Crown in the Protestant Line, and for Extinguishing the Hopes of the pretended Prince of Wales, and all other pretenders and their open and secret Abettors, and for Declaring the Association to be determined, at such time, and in such manner as the Members of both Houses of Parliament of England are by the said respective Acts, directed to take, make and subscribe the same upon the penalties and disabilities in the said respective Acts contained. And it is Declared and Agreed That these words This Realm, The Crown of this Realm, and the Queen of this Realm, mentioned in the Oaths and Declaration contained in the aforesaid Acts, which were intended to signify the Crown and Realm of England, shall be understood of the Crown and Realm of Great Britain, And that in that sense, the said Oaths and Declaration be taken and subscribed by the members of both Houses of the Parliament of Great Britain.

XXIII. THAT the foresaid Sixteen Peers of Scotland, mentioned in the last preceding Article, to sit in the House of Lords of the Parliament of Great Britain, shall have all Priviledges of Parliament which the Peers of England now have, and which They or any Peers of Great Britain shall have after the Union, and particularly the Right of sitting upon the tryals of Peers : And in case of the tryal of any Peer in time of Adjournment or Prorogation of Parliament, the said Sixteen Peers shall be summoned in the same manner, and have the same powers and priviledges at such tryal, as any other Peers of Great Britain ; And that in case any tryals of Peers shall hereafter happen when there is no Parliament in being, the Sixteen Peers of Scotland who sate in the last preceding Parliament, shall be summoned in the same manner and have the same powers and priviledges at such tryals as any other Peers of Great Britain ; and that all Peers of Scotland, and their successors to their Honours and Dignities, shall from and after the

Union be Peers of Great Britain, and have Rank and Precedency next and immediately after the Peers of the like orders and degrees in England at the time of the Union, and before all Peers of Great Britain of the like orders and degrees, who may be Created after the Union, and shall be tryed as Peers of Great Britain, and shall Enjoy all Priviledges of Peers, as fully as the Peers of England do now, or as they, or any other Peers of Great Britain may hereafter Enjoy the same except the Right and Privilege of sitting in the House of Lords and the Privileges depending thereon, and particularly the Right of sitting upon the tryals of Peers.

XXIV. THAT from and after the Union, there be One Great Seal for the United Kingdom of Great Britain, which shall be different from the Great Seal now used in either Kingdom; And that the Quartering the Arms and the Rank and Precedency of the Lyon King of Arms of the Kingdom of Scotland as may best suit the Union be left to Her Majesty: And that in the mean time the Great Seal of England be used as the Great Seal of the United Kingdom, and that the Great Seal of the United Kingdom be used for Sealing Writs to Elect and Summon the Parliament of Great Britain and for sealing all Treaties with Forreign Princes and States, and all publick Acts Instruments and Orders of State which Concern the whole United Kingdom, and in all other matters relating to England, as the Great Seal of England is now used, and that a Seal in Scotland after the Union be alwayes kept and made use of in all things relating to private Rights or Grants, which have usually passed the Great Seal of Scotland, and which only concern Offices, Grants, Commissions, and private Rights within that Kingdom, And that until such Seal shall be appointed by Her Majesty the present Great Seal of Scotland shall be used for such purposes; and that the Privy Seal, Signet, Casset, Signet of the Justiciary Court, Quarter Seal, and Seals of Courts now used in Scotland be Continued, but that the said Seals be altered and adapted to the state of the Union as Her Majesty shall think fit; And the said Seals, and all of them, and the Keepers of them, shall be subject to such Regulations as the Parliament of Great Britain shall hereafter make: And that the Crown, Scepter and Sword of State, the Records of Parliament, and all other Records, Rolls and Registers whatsoever, both publick and private generall and particular, and Warrands thereof Continue to be kept as they are within that part of the United Kingdom now called Scotland, and that they shall so remain in all time coming notwithstanding of the Union.

XXV. THAT all Laws and Statutes in either Kingdom so far as they are contrary to, or inconsistent with the Terms of these Articles, or any of them, shall from and after the Union cease and become void, and shall be so declared to be by the respective Parliaments of the said Kingdoms.

*Here follows Act 6 of this Parliament according to the tenor thereof:*

WHICH ARTICLES OF UNION and Act immediately abovementioned Her Majesty with advice and consent foresaid Statutes Enacts and Ordains to be and Continue in all time coming the sure and perpetuall foundation of ane compleat and intire Union of the Two Kingdoms of Scotland and England under this express Condition and Provision That the Approbation and Ratification of the foresaid Articles and Act shall be nowayes binding on this Kingdom untill the said Articles and Act be Ratified Approven and Confirmed by her Majesty with and by the Authority of the Parliament of England as they are now Agreed to Approved and Confirmed by Her Majestie with and by the Authority of the Parliament of Scotland Declaring nevertheless that the Parliament of England may pro-

vide for the security of the Church of England as they think expedient to take place within the bounds of the said Kingdom of England and not Derogating from the security above provided for Establishing of the Church of Scotland within the bounds of this Kingdom As also the said Parliament of England may extend the Additions and other provisions contained in the Articles of Union as above insert in favours of the Subjects of Scotland to and in favours of the Subjects of England which shall not Suspend or Derogate from the force and effect of this present Ratification But shall be understood as herein included without the necessity of any new Ratification in the Parliament of Scotland And Lastly Her Majesty Enacts and Declares That all Laws and Statutes in this Kingdom so far as they are contrary to or inconsistent with the terms of these Articles as abovementioned shall from and after the Union cease and become void.

8. *ACT Settling the manner of Electing the Sixteen Peers and Forty Five Commoners to Represent Scotland in the Parliament of Great Britain.*

OUR SOVERAIGN LADY Considering that by the twenty second Article of the Treaty of Union as the same is ratified by ane Act past in this Session of Parliament upon the sixteenth of January last It is provided that by virtue of the said Treaty of the Peers of Scotland at the time of the Union Sixteen shall be the number to sit and vote in the House of Lords and Fourty five the number of the Representatives of Scotland in the House of Commons of the Parliament of Great Britain And that the said Sixteen Peers and Fourty five members in the House of Commons be Named and Chosen in such manner as by a subsequent Act in this present Session of Parliament in Scotland should be settled Which act is thereby declared to be als valid as if it were a part of and ingrossed in the said Treaty Therefore Her Majestie with advice and consent of the Estates of Parliament Statutes Enacts and Ordains That the said Sixteen Peers who shall have right to sit in the House of Peers in the Parliament of Great Britain on the part of Scotland by virtue of this Treaty shall be named by the saids Peers of Scotland whom they represent their hoirs or successors to their dignities and honours out of their own number and that by open Election and plurality of voices of the Peers present and of the Proxies for such as shall be absent the said Proxies being Peers and producing a mandat in writing duely signed before witnesses and both the Constituent and Proxie being qualified according to law Declaring also that such Peers as are absent being qualified as aforesaid may send to all such meetings Lists of the Peers whom they Judge fittest validly signed by the said absent Peers which shall be reckoned in the same manner as if the parties had been present and given in the said List And in case of the death or legall incapacity of any of the said Sixteen Peers That the foresaid Peers of Scotland shall nominate another of their own number in place of the said Peer or Peers in manner before and after-mentioned And that of the said Fourty five Representatives of Scotland in the house of Commons in the Parliament of Great Britain Thirty shall be chosen by the Shires or Stewartries and Fifteen by the Royall Burrows as follows viz. One for every Shire and Stewartry excepting the Shires of Bute and Caithness which shall choise one by turns Bute having the first election The shires of Nairn and Cromarty which shall also choise by turns Nairn having the first election And in like manner the shires of Clackmannan and Kinross shall choise by turns Clackmannan having the first election And in case of the death or legall incapacity of any of the said Members from the respective shires or steuartries abovementioned to sit in the house of Commons It is Enacted and Ordained that the shire or stewartry who Elected the said member shall Elect another member in his place And that the said Fifteen Representatives for the Royall Burrows be chosen as

follows viz. That the Town of Edinburgh shall have right to Elect and send one member to the Parliament of Great Britain And that each of the other burghs shall Elect a Commissioner in the same manner as they are now in use to Elect Commissioners to the Parliament of Scotland Which Commissioners and Burghs (Edinburgh excepted) being divided in fourteen Classes or Districts shall meet at such time and burghs within their respective Districts as her Majestie her heirs or Successors shall appoint and Elect one for each District viz. The Burghs of Kirkwall Week Dornock Dingwall and Tayne one The burghs of Fortrose Inverness Nairn and Forress one The burghs of Elgin Cullen Bamff Inverury and Kintore one The burghs of Aberdeen Inverbervy Montrose Aberbrothock and Breichen one The burghs of Forfar Perth Dundee Coupar and St Andrews one The burghs of Craill Kilrennie Anstruther easter Anstruther wester and Pittenweem one The burghs of Dysart Kirkaldie Kinghorn and Burntisland one The burghs of Inverkeithen Dumfermline Queensferry Culross and Stirling one The burghs of Glasgow Renfrew Rutherglen and Dumblaiton one The burghs of Haddington Dumbarton Northberwick Lauder and Jedburgh one The burghs of Selkirk Peebles Linlithgow and Lanerk one The burghs of Dumfries Sanquhar Annan Lochmaben and Kirkcudbright one The burghs of Wigtown Newgalloway Stranraer and Whitehern one, And the burghs of Air Irvin Rothesay Cambeltoun and Inverary one And It is hereby Declared and Ordained That where the Votes of the Commissioners for the said burghs met to Chose Representatives from their severall Districts to the Parliament of Great Britain shall be equall in that case the President of the meeting shall have a casting or decisive Vote and that by and attour his vote as a Commissioner from the burgh from which he is sent the Commissioner from the eldest burgh presideing in the first meeting and the Commissioners from the other burghs in their respective Districts presideing afterwards by turns in the order as the said burghs are now called in the Rolls of the Parliament of Scotland And in case that any of the said fifteen Commissioners from Burghs shall decease or become legally incapable to sit in the House of Commons Then the Town of Edinburgh or the District which choised the said member shall elect a member in his or their place It is always hereby expressly Provided and Declared that none shall be capable to Elect or be Elected for any of the said Estates but such as are Twenty one years of age compleat and Protestant Excluding all Papists or such who being suspect of Popery and required refuse to Swear and Subscribe the Formula contained in the third Act made in the eighth and ninth Sessions of King Williams Parliament entituled Act for preventing the growth of Popery And also declaring that none shall be capable to Elect or be Elected to Represent a shire or burgh in the Parliament of Great Britain for this part of the United Kingdom except such as are now capable by the Laws of this Kingdome to Elect or be Elected as Commissioners for shires or burghs to the Parliament of Scotland And farder Her Majestie with advice and consent foresaid for the effectuall and orderly Election of the persons to be chosen to sit vote and serve in the respective Houses of the Parliament of Great Britain when Her Majesty her heirs and successors shall declare her or their pleasure for holding the first or any subsequent Parliament of Great Britain And when for that effect a Write shall be Issued out under the Great Seal of the United Kingdom directed to the Privy Counsell of Scotland conforme to the said twenty second Article Statuts Enacts and Ordains That untill the Parliament of Great Britain shall make further provision therein the said Write shall contain a Warrant and Command to the said Privy Counsell to Issue out a Proclamation in her Majesties name requiring the Peers of Scotland for the time to meet and assemble at such time and place within Scotland as Her Majestie and Royall Successors shall think fit to

make Election of the said sixteen Peers, and requiring the Lord Clerk Register or two of the Clerks of Session to attend all such meetings and to administer the Oaths that are or shall be by Law required and to ask the Votes And having made up the Lists in presence of the meeting to return the names of the Sixteen Peers chosen (certified under the Subscription of the said Lord Clerk Register Clerk or Clerks of Session attending) to the Clerk of the Privy Counsell of Scotland And sicklike Requiring and Ordaining the severall freeholders in the respective Shires and Stewartries to meet and convene at the head burghs of their severall Shires and Stewartries to Elect their Commissioners conforme to the order above set down And Ordaining the Clerks of the said meetings immediately after the said Elections are over respectively to return the names of the persons elected to the Clerks of the Privy Counsell And lastly Ordaining the City of Edinburgh to Elect their Commissioner and the other Royall Burrows to Elect each of them a Commissioner as they have been in use to Elect Commissioners to the Parliament and to send the said respective Commissioners at such times to such Burghs within their respective Districts as Her Majesty and Successors by such Proclamations shall appoint Requiring and Ordaining the common Clerk of the respective burghs where such elections shall be appointed to be made to attend the said meetings and immediately after the Election to return the name of the persons so elected (certified under his hand) to the Clerk of Privy Counsell to the end that the names of the Sixteen Peers Thirty Commissioners for Shyres and Fifteen Commissioners for Burghs being so returned to the Privy Counsell may be returned to the Court from whence the Writ did Issue under the Great Seal of the United Kingdom conforme to the said twenty second Article And whereas by the said twenty second Article It is agreed That if her Majesty shall on or before the first day of May next Declare That it is expedient the Lords and Commons of the present Parliament of England should be the members of the respective houses of the first Parliament of Great Britain for and on the part of England they shall accordingly be the members of the said respective Houses for and on the part of England Her Majesty with advice and consent foresaid in that case only Doth hereby Statute and Ordain That the Sixteen Peers and Fourty five Commissioners for Shires and Burghs who shall be chosen by the Peers Barrons and Burghs respectively in this present Session of Parliament and out of the Members thereof in the same manner as Committees of Parliament are usually now chosen shall be the members of the respective Houses of the said first Parliament of Great Britain for and on the part of Scotland Which Nomination and Election being certified by a Writ under the Lord Clerk Registers hand the persons so Nominated and Elected shall have right to sit and vote in the House of Lords and in the House of Commons of the said first Parliament of Great Britain.<sup>377</sup>

#### 10. *ACT anent Plantation of Kirks and Valuation of Teinds.*

OUR SOVERAIGN LADY and the Estates of Parliament Considering the great prejudice that does redound to this Nation through the want of ane established and fixed Judicature which may cognosce and determine in such causes and things as by former Parliaments were referred to their Commissions for Plantation

<sup>377</sup> The last part of this act is *ex facie* temporary. The election of members to the Commons House of Parliament is now regulated by the 2d and 3d Will. IV. ch. 65, which has increased the number of Scotch members to fifty-three.

In connection with that part of the present act which relates to the election of Peers, see articles 22 and 23 of Treaty of Union, which was explained and amended, so far as it related to the trial of Peers for offences committed in Scotland, by 6th Geo. IV. ch. 66.



of Kirks and Valuation of Teinds and through the loss of the Registers of that Court which were burnt in the late fire that happened in this place Therefore Her Majestie and the said Estates Doe hereby Impower Authorize and Appoint the Lords of Counsell and Session to Judge Cognosce and Determine in all affairs and causes whatsoever which by the Laws and Acts of Parliament of this Kingdome, were formerly referred to and did pertain and belong to the Jurisdiction and Cognisance of the Commissions formerly appointed for that effect also fully and freely in all respects as the said Lords do or may do in other civil causes, And particularly but prejudice to the generality forsaide to determine in all valuations and sales of Teinds, to grant augmentations of Ministers Stipends, prorogations of Tacks of Teinds, to disjoin too large paroches, to erect and build new Churches, to annex and dismember Churches as they shall think fit, conforme to the Rules laid down and powers granted by the nineteenth Act of the Parliament Im vj<sup>c</sup> and thirty three the twenty third and thirtieth Acts of the Parliament Im vj<sup>c</sup> and ninety and the twenty fourth Act of the Parliament Im vj<sup>c</sup> and ninety three in sua far as the same stands unrepealed; the transporting of Kirks, disjoyning of too large paroches, or erecting and building of new kirks, being alwayes with the consent of the heritors of three parts of four at least of the valuation of the paroch whereof the kirk is craved to be transported or the paroch to be disjoynd and new kirks to be erected and built the Minister in the mean time to serve the cure in the present kirk of the paroch. And for that effect appoints the saids Lords to meet and sit each Wednesday in the afternoon during the time of Session And to call and discuss the said causes summarly conforme to an Roll to be made up and kept of the samen And for supplying the lost Registers of that Court Her Majesty and the said Estates Do hereby Appoint and Ordain that any authentick Extracts from the said Records be brought in and being presented to the said Lords be Recorded in a particular Register And that the said Extracts so brought in be kept by the Lord Clerk Register and his Deputs Clerks to be appointed by him for that effect as their warrands which shall be held and repute also valid and authentick as the principall warrands themselves if the same were yet extant And the Lord Register and his deputs are ordained to give a new Extract gratis to every person that shall give in ane old Extract immediately upon delivery thereof And that Extracts from these new Records shall make the like faith in Judgement and outwith the same as the Extracts from the old Registers of the Commission were wont to do before the same were burnt And further Impowering the said Lords upon such evidents and adminicles as they shall see cause to make up the tenor of such decreets in manner abovementioned whereof Extracts are amissing and the Registers lost in the said fire; Declaring hereby that the Lord Register and his Deputs to be appointed by him as said is shall have the sole and only power and privilege of Raising and Subscribing of the Summondses and Diligences relating to the affairs abovementioned the samen alwayes passing Her Majesties common Signet as formerly And also declaring that the Macers of Privy Counsell who by their gifts did attend and officiate before the said Commission of Parliament shall continue to attend and officiate before the said Lords of Session in the matter committed to them by this Act as they were in use to doe before the Commission and none else And Lastly It is hereby declared That this present Act and Commission shall be subject nevertheless to such Regulations and Alterations as shall be made by the Parliament of Great Britain.<sup>378</sup>

<sup>378</sup> This act instituted the present Teind Court, the powers and proceedings of which are farther regulated by the 48th Geo. III. ch. 138, 50th Geo. III. ch. 84, 1st and 2d Geo. IV. ch. 38, § 9 and 10, 5th Geo. IV. ch. 72, 6th Geo. IV. ch. 120, § 54, 1st and 2d

84. *ACT Renouncing the Reversion of Kirklands.*

OUR SOVERAIGN LADY Considering that by the severall annexations of Kirklands to the Crown the feu duties are Reserved to the Lords of Erection, redeemable by Her Majesty and successors by payment of a thousand Merks for each hundred merks or chalder of victuall and proportionally for every other duty not being naked services And that this Reversion has been no profit to the Crown but a Let and Impediment of all Transactions betwixt the Lords & fewars theranent And that the said Lords of Erection and their Successours in their rights have been alwayes most dutifull to Her Sacred Majesty and Her predecessors Therefore and for the other grounds above written Her Majesty with advice and consent of the Estates of Parliament Dissolves the said feu duties from the Crown and Rescinds all the Acts of Annexation therof to the effect the same may remain with the Lords of Erection and those having right from them irredeemably and for ever And therefore Discharges the said Reversion contained in the severall Acts of Parliament And for Her and her Successors Renounces the same for ever And Wills and Ordains that this generall Discharge and Renunciation shall be also valid and effectuell to every person concerned as if they had particular Discharges and Renunciations apart Registrare in the Register of Reversions and Discharges thereof Wheranent and anent all Imperfections that may be objected Her Majesty for herself and successors with advice and consent forsaid Hes Dispensed and hereby Dispenses for ever Declaring this Act shall not preclude Her Majesty and Her Royall Successors of the Right of Superiority of the said Erections or of any Duties Casualties or Services prestable by the Lords of Erection for the samen conforme to their severall Rights thereof.

91. *ACT for preserving the Game.*

OUR SOVERAIGN LADY with advyce and consent of Parliament does hereby strictly Prohibite and Discharge in all tyme comeing the Killing of Moor-Fowls from the first of March to the twenty of June and Partridges from the first of March to the twenty of August inclusive under the penalty of Twenty pounds Scots toties quoties the half whereof to be given to the Discoverer and the other half to be at the disposall of the Judge before whom the same shall be cognosced And for the better preventing the killing of these fowls dureing the forsaid prohibited seasons Her Majesty with advyce forsaid does strictly Prohibite and Discharge the selling buying or using of these fowls dureing the forsaid Seasons within any burgh village or privat house within this Kingdome under the penalty forsaid to be applyed as above As also It is hereby Discharged that no common Fowllers shall presume to hunt on any grounds without a subscribed Warrant from the proprietors of the said grounds under the penalty forsaid Besyds forfaulting their dogs guns and nets to the Apprehenders or Discoverers And it is hereby further Provided That no Fowller or any other person whatsoever shall come within any Heritors ground without leave ask'd and given by the Heritor with setting dogs and nets for killing fowls by nets And if any common Fowller shall be found in any place with guns or nets haveing no licence from any Nobleman or Heritor they shall be sent abroad as Recruits As also that no persons what-

Vict. ch. 118, § 2, 26, 27, and 2d and 3d Vict. ch. 36; also by A. S. 22d Feb. 1809, A. S. 5th July 1809, A. S. 12th Nov. 1825, amended by A. S. 24th Nov. 1825, A. S. 20th June 1838, and A. S. 4th June 1841.

As this act communicated to the New Teind Court the whole powers possessed by previous temporary commissions, these commissions have been published in their proper places, and a list of them is given in the note annexed to the first of them, viz. 1617, ch. 3.

somever shall shoot Hares under the forsaid penalty And for the better Executeing of this Law Her Majestie with advyce forsaid Appoynts and Ordains all Shirriffes of Shyres Stewarts of Stuartries Justices of Peace Masters of the Game Baillies of Burghs or Regalities to put the same in due Execution under the penalty of One hundred pounds Scots For which penalty It is herby declaired that the saids judges shall be lyable to the Pursuer or Complainer before the Lords of Session upon ane Instrument taken by the said Pursuer or Complainer that the Judge applyed to refused or delayed to Cognosce the Complaint accordyng to Law and to Decern in the terms of this Act And Lastly Her Majestie with consent forsaid does herby Ratify and Approve all former Acts made anent the Game except in so far as they are hereby innovat and altered by this present Act.<sup>379</sup>

<sup>379</sup> This act, so far as it relates to the shooting of hares, is expressly repealed by 48th Geo. III. ch. 94.

In other respects the act is superseded to a great extent by 13th Geo. III. ch. 54, 39th Geo. III. ch. 34, and 2d and 3d Will IV. ch. 68, which see. See also Blair's *Justice of Peace*, p. 95, *et seq.*, and Art. "Game Laws" in Bell's Dict. and Dig., and authorities there referred to.

**A CHRONOLOGICAL TABLE**  
**OF THE**  
**WHOLE ACTS AND STATUTES**  
**OF THE**  
**PARLIAMENT OF SCOTLAND**  
**FROM THE REIGN OF KING JAMES THE FIRST**  
**IN MCCCCXXIV,**  
**TO THE UNION WITH ENGLAND**  
**IN MDCCVII.**

**CONTAINED IN MR THOMAS THOMSON'S EDITION OF THESE ACTS,  
PRINTED BY COMMAND OF HIS MAJESTY KING GEORGE THE  
THIRD, IN PURSUANCE OF AN ADDRESS OF THE HOUSE  
OF COMMONS OF GREAT BRITAIN.**

*The Acts marked with an Asterisk are inserted in the foregoing Abridgment.*



# ACTA PARLIAMENTORUM REGIS JACOBI PRIMI.

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12.

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## PARLIAMENTUM APUD EDINBURGH.

1579,  
Oct. 20.

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Nov. 10.

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1685. PARLIAMENTUM APUD EDINBURGH,  
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1707,  
Mar. 25.

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*List of the Persons who voted in the Scottish Parliament for and against the " Act Ratifying and Approving the Treaty of Union of the two Kingdoms of Scotland and England."*

16th January 1807.

## APPROVERS OF THE NOBILITY.

The Lo. Chancellor allowed to be printed as an Approver by special order of Parliament.

M: Montrose P.S.C.

D: Argyll

M: Tweeddale

Lothian

E: Marr Sec:

Sutherland

Roths

Mortoun

Glencairn

Abercorn

Roxburgh

Haddingtoun

Lawderdale

Wemyss

Dalhousie

Findlater

Leven

Northesk

Belcarras

Forfar

Kilmarnock

Kintoir

Marchmount

Cromarty

Roseberry

Glasgow Ther. Dept

Hopetoun

Delorain

Illy

V: Duppline

L: Forbes

Elphinstoun

Ross

Torphichen

Fraser

Banff

Elibank

Duffus

Rollo

Lo: Register

Lo: Justice Clerk

## OF THE BARONS.

Sr Rot Dickson of Inverask

Wm Nisbet of Dirletoun

Jon Cockburn younger of Ormestoun

Sr John Swinton of that Ilk

Sr Alexr Campbell of Cessnock

Sr Wm Kerr of Greenhead

Archibald Douglas of Cavers

Wm Bennet of Grubbet

Mr John Murray of Bowhill

M<sup>r</sup> Jon Fringle of Haining

Wm Morison of Prestongrange

Alexr Horseburgh of that Ilk

George Baillie of Jarviswood

Sr Jon Johnstoun of Westerhall

Wm Dowglass of Dornock

Mr Wm Stewart of Castle Stewart

M<sup>r</sup> Jo<sup>n</sup> Stewart of Sorbie

Mr Francis Montgomery of Giffan

Mr Wm Dalrymple of Glenmuir

Mr Rot Stewart of Tillicultrie

Sr Rot Pollock of that Ilk

Mr John Montgomery of Wrae

John Halden of Glenagies

Mongo Graham of Gorthie

Sr Thomas Burnet of Leyes

Wm Seton younger of Pitmedden

Alexr Grant younger of that Ilk

Sr Kenneth McKenzie

M<sup>r</sup> Eneas McLeod of Cadboll

Mr John Campbell of Mammore

Sr James Campbell of Auchinbreck

James Campbell younger of Ardkinglass

Sr Wm Anstruther of that Ilk

James Halyburton of Pitcur

Alexr Abercrombie of Glasoch

Mr James Dunbar younger of Hemprigs

Alexr Dowglas of Eagleshaw,

John Bruce of Kinross



## OF THE BURROWS.

John Scrimsour  
 Lieut Coll Jon Areskine  
 John Mure  
 James Scott  
 Sr Jon Areskine  
 James Spittle  
 Mr Pat Moncrieff  
 Sr Andrew Home  
 Sr Peter Halket  
 Sr James Smollet  
 M<sup>r</sup> Wm Carmichell  
 M<sup>r</sup> Wm Sutherland  
 Capt Dan McLeod  
 Sr Dav Dalrymple  
 Sr Alex<sup>r</sup> Ogilvie

Mr Jon Clerk  
 John Ross  
 Sr Hugh Dalrymple  
 Mr Pat Ogilvie  
 George Allardyce  
 Wm Alvis  
 Mr James Bethun  
 Mr Rod McKenzie  
 John Urquhart  
 Dan Campbell  
 Sr Rot Forbes  
 M<sup>r</sup> Rot Dowglass  
 M<sup>r</sup> Alex<sup>r</sup> Maitland  
 M<sup>r</sup> Geo Dalrymple  
 M<sup>r</sup> Charles Campbell

## NOES OF THE NOBILITY.

D: Hamiltoun  
 M: Annandale  
 E: Erroll  
 Marischall  
 Buchan  
 Caithness  
 Wigtoun  
 Galloway  
 V: Stormont  
 Kilsyth

Lo: Saltoun  
 Sempill  
 Oliphant  
 Balmerino  
 Blantyre  
 Baggary  
 Bellhaven  
 Colvill  
 Kinnaird

## OF THE BARRONS.

Sr John Lawder of Fountainhall  
 Andrew Fletcher of Saltoun  
 Sr Robert Sinclair of Longformacus  
 Sr Pat Home of Rentoun  
 Sr Gilbert Elliot of Minto  
 Wm Baillie of Lamington  
 John Sinclair younger of Stevensone  
 James Hamilton of Aikenhead  
 Mr Alex<sup>r</sup> Ferguson of Isle  
 Sr Hugh Cathcart of Carleton  
 John Brisbane younger of Bishoptoun  
 Mr Wm Cochrane of Kilmarnock  
 Sr Humphrey Colquhoun of Lass  
 Sr John Houston of that Ilk  
 Robert Rollo of Powhouse

Thomas Sharp of Houston  
 John Murray of Strowan  
 Alex<sup>r</sup> Gordon of Pitlurg  
 John Forbes of Collioden  
 David Bethun of Balfour  
 Major Henry Balfour of Dunboog  
 Mr Thomas Hope of Rankellor  
 Mr Patrick Lyon of Auchterhouse  
 Mr James Carnegie of Phinhaven  
 David Graham younger of Fintrie  
 Wm Maxwell of Cardines  
 Alex<sup>r</sup> McKye of Falgown  
 James Sinclair of Stampster  
 Sr Henry Innes younger of that Ilk  
 Mr George McKensie of Inchcoulter

## OF THE BURROWS.

Robert Inglis  
 Alex<sup>r</sup> Robertson  
 Walter Stewart  
 Hugh Montgomerie  
 Alex<sup>r</sup> Edgar  
 Alex<sup>r</sup> Duff  
 Francis Molison  
 Walter Scott  
 Rot Scott  
 Rot Kellie

John Hutchesone  
 Arch Scheillis  
 Mr John Lyon  
 George Brodie  
 George Spens  
 Sr Dav Cunningham  
 Mr Jon Carruthers  
 George Home  
 John Bayne  
 Mr Rot Fraser

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